

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2009-13439
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 9, 2009
Clare County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on June 9, 2009.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) November 26, 2008, claimant applied for MA, retro-active MA, and SDA.

Claimant submitted medical records for department consideration.

(2) January 12, 2009, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) January 16, 2009, the department sent claimant written notice that the application was denied.

(4) January 22, 2009, the department received claimant's timely request for hearing.

(5) March 2, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) June 9, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by a spinal injury.

(8) Claimant testified at hearing. Claimant is 47 years old, 6' 1" tall, and weighs 190 pounds. Claimant completed 12th grade and is able to read, write, and perform basic math. His driver's license is revoked. He cares for his needs at home.

(9) Claimant's past relevant employment has been installing sea walls, metal fabricating, and construction.

(10) January 12, 2007, claimant was examined by a neurosurgeon and notes were prepared. Physical exam revealed motor strength was 5/5 in all extremities; sensation was intact to light touch; toes were downgoing; no clonus was noted; deep tendon reflexes were 3+ bilateral patellar and 2+ ankle jerks; positive straight leg raise on left to approximately 20 degrees. Claimant uses crutches at putting weight on left causes severe back pain. MRI revealed L5-S1 herniated disc with sequestered disc in the canal, both cephalad and caudal to the L5-S1 disc space. The disc material is on the left side and impinges on the nerve at this level.

Department A, pages 190-192. January 17, 2007, claimant had hemilaminotomy and medial facetectomy; interbody fusion; gill procedure; and lateral transverse fusion using bone allograft

and autograft at L5-S1. Department A, pages 186-187. February 2, 2007, claimant was examined by his neurosurgeon. Physical exam revealed good improvement with occasional leg pain and well healed incision. Department A, page 181. MRI revealed no evidence of an obvious traumatic process. Department A, page 179. Doctor released claimant to return to work on April 1, 2007 with no lifting over 15 pounds and no more than 2 hours of sitting. Department A, page 178. March 2, 2007, x-rays of the lumbar spine revealed normal post-operative appearance of the lumbosacral spine. Department A, page 176.

(12) April 24, 2007, claimant's neurologist notes that claimant's films revealed good alignment and no movement at the interbody graft. There is no spondylolisthesis and no impingement of nerve roots. Department A, page 170. April 16, 2007 CT of the lumbar spine revealed post surgical change at the L5-S1 level, soft tissue fullness to the left of midline compatible with post surgical change with filling of the lateral recess to the left of the midline, no new areas of disc protrusion is noted away from the L5-S1 level. Department A, page 173. April 26, 2007, MRI revealed moderate enhancing fibrosis obscures the epidural fat on the left and surrounds the left nerve root, recurrent disc herniation is not clearly defined although there is some signal artifact from the adjacent metallic ball partially obscuring fine detail. Department A, page 169.

(13) May 9, 2007, claimant underwent surgery to remove adhesions from the L5-S1 level. Department A, page 165-166. Claimant was examined by his neurologist on May 22, 2007 and was noted to have great relief from pain. He was to avoid lifting greater than 15 pounds and sitting for longer than 2 hours. Claimant was released to return to work on June 18, 2007. Department A, page 78. Department A, page 159-160. June 21, 2007, claimant's neurologist notes that claimant is doing well. Department A, page 157.

(14) December 6, 2007, claimant's neurologist notes that claimant has pain in left buttock on sitting. Department A, page 154. December 8, 2007, x-rays revealed stable granulation/fibrotic residuals at levels L5-S1 to the left of midline adjacent to the laminectomy; and stable nerve root encasement of the left at the L5-S1 nerve root exit point. Department A, page 153. May 27, 2008, claimant underwent a functional assessment. A letter was prepared that states claimant has symmetrical, normal gait pattern. Range of motion in lumbar spine reveals pain, limited flexion, extension, sidebending, and rotation. Structural exam of the spine reveals flattening of the thoracic spine. Structural exam of the pelvis reveals symmetrical alignment with no leg length discrepancy. Manual muscle testing of the lower extremities reveals +5/5 muscle strength in all muscle groups. Sensation is intact to light touch and pinprick in all lower extremity dermatomes. Deep tendon reflexes are +2/4 in bilateral patellar and Achilles. Straight leg raise, Scour's test, and Patrick/FABER's test are all negative bilaterally. Babinski is downgoing bilaterally. Claimant apparently expects to have surgery to remove the misaligned hardware from his spine. Department A, pages 126-127. September 9, 2008, claimant underwent epidural injections to the L5-L6 region of his spine. Department A, pages 139-140.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that in January 2007 claimant underwent back surgery and placement of hardware at L5-S1. Doctor released claimant to return to work on April 1, 2007 with weight lifting restrictions and sitting limitations. Claimant was later found to have developed adhesions at the surgical site. These were removed in May 2007. Claimant did well after this surgery. He was released to return to work on June 18, 2007. During December 2007, claimant again complained of pain with sitting. Doctor opines that claimant has misaligned spinal hardware. In May 2008, claimant was found to have normal symmetrical gait. Pelvis was symmetrical with no leg length discrepancy. Muscle testing in lower extremities is +5/5 in all muscle groups. Sensation is intact to light touch and pinprick in all lower extremity dermatomes. Deep tendon reflexes are +2/4 in bilateral patellar and Achilles. Straight leg raise test, Scour's test, and Patrick/FABER's test are negative bilaterally. Babinski is downgoing bilaterally. Range of motion in lumbar spine reveals pain, limited flexion, extension, sidebending, and rotation. Finding of Fat 10-14.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a carpenter and in metal fabricating. The objective medical evidence of record states that claimant has limited range of motion in his lumbar spine area. All other systems are within normal limits. Claimant's doctor has opined that claimant should not lift over 15 pounds and should avoid sitting longer than 2 hours. Claimant complains of pain. See discussion at Step 2, above.

At Step 4, claimant's past relevant employment generally requires lifting greater than 15 pounds, accordingly, the objective medical evidence of record is sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is not disqualified from receiving disability at Step 4.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing

is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the objective medical evidence of record indicates that claimant is post back surgeries and expects to have another surgery to remove misaligned hardware. In May 2008, his physical exam was within normal limits with the exception of reduced range of motion in his lumbar spine. Claimant's neurologist opines that claimant should limit lifting to no more than 15 pounds and should avoid sitting longer than 2 hours.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least sedentary activities. Considering claimant's Vocational Profile (younger individual, high school education, and history of semi-skilled work) and relying on Vocational Rule 201.21, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
- (d) A person receiving 30-day post-residential substance abuse treatment.
- (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).

- (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-3, and 5, above, the Administrative Law Judge decides that claimant does not have severe impairments

that prevent work for 90 days or more that include his application date. Therefore, claimant does not qualify for SDA based on disability and the department properly denied his application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is **HEREBY UPHELD**.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 30, 2009

Date Mailed: July 2, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JAB/db

cc:

