

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: 2009-14960
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2009
Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 telephone hearing was held on May 19, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

FINDINGS OF FACT

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

- (1) Claimant is a divorced, 51-year-old male with a limited education (completed 8th grade) who lives alone in a mobile home he owns on his mother's property.
- (2) Claimant's work history involves heavy manual labor in carpentry, construction, painting, drywall and handyman jobs.

(3) On December 8, 2008, claimant was treated in a local emergency department for acute lower lumbar pain which happened spontaneously when he was out walking and collapsed with sharp, stabbing lower left back pain.

(4) This intractable pain continued until claimant was finally admitted to [REDACTED] on December 30, 2008 (Department Exhibit #1, pg 30).

(5) Claimant's lower lumbar MRI scan at admission (12/30/08) revealed advanced degenerative arthritis, particularly narrow at L2-3 and L3-4 with bulging and protrusions at those levels as well as moderate central and left neural foraminal bulging at L3-4 and L4-5 (Department Exhibit #1, pgs 127 and 128).

(6) A neurosurgery consultation on December 31, 2008 indicates the MRI obtained that day confirmed a gigantic, left L3-4 herniation with cephalad fragment migration to claimant's L3 pedicle resulting in a pinned nerve root at that level (Department Exhibit #1, pgs 111 and 112).

(7) The consulting neurosurgeon recommended an immediate left L3-L4 lumbar discectomy which occurred the following day (1/1/09).

(8) The neurosurgeon's prognosis at that time was as follows:

Anticipated recovery given the severity and extensiveness of his difficulties I would expect it would be 12-18 months before this gentleman is able to work again (Department Exhibit #1, pg 111).

(9) As of claimant's May 19, 2009 MA/SDA application denial hearing date (4 months post surgery) claimant was still experiencing intractable lower lumbar pain daily with radiation down his left leg.

(10) Additionally, claimant's left leg lacks muscle tone and strength; he cannot sit, stand, walk, bend or lift anything without greatly exacerbating his pain levels.

(11) Claimant takes no prescription pain medications because they are not effective in controlling his pain, and also, he refuses to chance returning to the drug dependency problems he had in his youth.

(12) Claimant's doctor has recommended a cane but claimant reports he feels uncomfortable with it out in public because he thinks people are staring at him so he mostly isolates in his mobile home.

(13) Claimant needs assistance from friends and/or relatives with completing basic daily living activities like grocery shopping, housework and driving (Department Exhibit #1, pgs 146-149).

(14) Prior to his injury, claimant was in relatively good health with hobbies like rappelling, rock climbing, snowshoeing, hunting and boating; now he is physically incapable of doing any of these things due to intractable pain (Department Exhibit #1, pg 146)(See also Finding of Fact #8 above).

(15) When the department denied claimant's disability application, he filed a hearing request to protest the denial.

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).

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).

"Disability" is:

...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.

The SDA definition is substantially similar, except for a shorter durational requirement of 90 days. Claimant's intractable pain and limitations secondary to it have lasted the required durations necessary to continue this inquiry into his disability status.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities.

20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone.... 20 CFR 416.945(e).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

...Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms.... 20 CFR 416.929(c)(3).

...Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account...in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(3).

...We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons.... 20 CFR 416.929(c)(3).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

...We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, medical signs and laboratory findings, and

statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you.... 20 CFR 416.929(c)(4).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

In claimant's case, the pain and other related symptoms he describes (insomnia, depression, isolation, range of motion limitations, etc.) are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his testimony in this regard.

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).

Claimant is not disqualified from receiving MA/SDA at Step 1 because he is not currently employed.

At Step 2, the objective medical evidence clearly shows the durational and severity standards have been met. Furthermore, claimant's treating neurosurgeon opines claimant's recovery will take at least 12 months from the date of surgery (1/1/09). As such, this analysis must continue.

At Step 3, claimant's diagnosed orthopedic impairment does not appear to rise to the level necessary to be specifically listed as disabling by law; consequently, an analysis of his ability to engage in his past relevant work is required.

At Step 4, it is clear claimant cannot perform his past relevant heavy exertional work activity due to his combined exertional and non-exertional symptoms. Consequently, an analysis of Step 5 is required.

At Step 5, claimant's age, education, work experience and residual functional capacity are assessed in light of the documented impairments. However, these rules do not apply in cases where an individual is found to have no residual functional capacity because he or she cannot perform even sedentary work, as that term is defined at 20 CFR 416.967(a).

Under the facts and circumstances presented by this case, and considering claimant's credible testimony and his treating physician's assessment/opinion, claimant has shown by clear and convincing evidence that his limitations are severe enough to prevent him from engaging in even sedentary work through a reasonable recovery period. Consequently, he meets the

MA/SDA durational criteria and disability standards cited above. The department's finding to the contrary simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not currently legally disabled.

Accordingly, the department's decision is REVERSED and it is Ordered that:

(1) The department shall process claimant's December 26, 2008 MA/SDA application and shall award him all of the benefits to which he may be entitled, as long as he meets the remaining financial and non-financial eligibility factors.

(2) The department shall review claimant's condition for medical improvement in January, 2010.

(3) The department shall obtain updated medical evidence from claimant's treating physician, surgeon, physical therapist, pain clinic, etc. regarding his continued treatment, progress and prognosis at review.

(4) The department also shall schedule claimant for an independent consultative physical examination at the time of review.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 15, 2009

Date Mailed: July 16, 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.

MBM/db

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