

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: 2009-17692

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 10, 2009

Ottawa 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 June 10, 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, nearly 52-year-old (DOB: 6/20/57) former heavy smoker (40 years/2 packs per day) who says he quit smoking after COPD was diagnosed during a four day hospitalization in July, 2008 (7/19/08-7/23/08)(Department Exhibit #1, pgs 19-29, 82 and 88).

(2) Claimant lives alone; he is independent in all self cares and daily living activities except driving because he lost his license secondary to alcohol-related convictions in [REDACTED] and [REDACTED] now he takes the bus or gets rides from family/friends (Department Exhibit #1, pgs 84-87).

(3) Claimant's past relevant work is being a full-time machine operator; he worked in that capacity approximately ten years until his July, 2008 hospitalization, but he has been unemployed since then (Department Exhibit #1, pg 83).

(4) Claimant's interests and hobbies include watching movies and sports, visiting with family and riding his bike (Department Exhibit #1, pg 86).

(5) Claimant's follow-up medical examination, dated November 13, 2008, provides the following historically accurate synopsis of his treatment:

...He indeed has just recently discovered that he has respiratory problems. He was unaware of them until January 2008 when he had a bad cold and an x-ray showed changes of COPD. He had courses of [REDACTED] and antibiotics in the winter and spring. Emergency room visits occurred at least twice.

In July he was admitted to the ICU. There may not have been a pneumonia diagnosis. He went on oral steroids and eventually tapered and discontinued. He no longer uses oxygen during the day but still is using two liters of oxygen at night.

Exacerbating factors include hot humid weather and exercise. He still cannot think of any chemical or other inhalation stimuli. His doctor does not feel he should go back to work in the factory with the cutting oil exposure. As before he still uses the home nebulizer with [REDACTED] and also mentions [REDACTED] at this time, last being necessary about five days ago...

...His cough is not generally productive. He can still exert to some degree such as slowly climbing a flight of stairs. Since I saw him two months ago he's had another course of steroid and antibiotics which he has completed. He no longer thinks his employer is holding a job for him and his insurance will be cutoff (Department Exhibit #1, pg 99).

(6) As of claimant's June 10, 2009 disability application denial hearing, he was still using inhalers occasionally ([REDACTED]) with periodic, short-term steroid burst and taper, most recently in February, 2009; he no longer uses a home nebulizer because he cannot afford it.

(7) In November, 2008, claimant underwent repeat Pulmonary Function Tests (PFTs); at that time, his PFT values were more favorable than in September; additionally, claimant's lungs were clear with no wheezing but some coarse breath sounds were present (Department Exhibit #1, pg 100).

(8) Claimant admitted he smoked a couple times since hospitalization and he hasn't returned to work due to lack of energy; complete smoking cessation again was stressed (Department Exhibit #1, pgs 101 and 102).

(9) Claimant stands 5'11" tall and is medically obese at 235 pounds (BMI=32.8).

(10) Claimant's November 24, 2008 progress report notes claimant reported no musculoskeletal complaints (muscle aches/backaches/tender joints) or mental illness, depression or anxiety disorders (Department Exhibit #1, pg 101).

(11) When the department denied continuation of claimant's monthly cash grant (SDA) at medical review, and also denied the MA application he filed then (1/20/09), claimant requested a hearing to dispute these issues.

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).

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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by

a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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).

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.

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).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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 has not been employed since July, 2008 (See Finding of Fact #3 above).

At Step 2, claimant alleges disability based solely on his recent COPD diagnosis. While this impairment caused claimant's treating physician to opine claimant should not return to his old factory job because of exposure to an environmental irritant (cutting oil), he did not opine claimant was completely disabled by his COPD. Additionally, it must be noted claimant's pulmonary function tests in November, 2008 show considerable improvement over his condition when he was hospitalized in July, 2008. Furthermore, claimant's condition can be expected to further improve as long as smoking cessation continues.

Lastly, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed COPD meets the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairment is severe enough to meet or equal any specifically listed impairment; consequently, the analysis must continue.

At Step 4, the record supports claimant's position he is not, and most likely can never be medically cleared to return to his old career as a machine operator due to environmental pollutants generally associated with that job. As such, this analysis must continue.

At Step 5, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a 52-year-old individual with a limited education (completed 11th grade) and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform a wide variety of light work jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Thus, claimant is not disabled under the MA/SDA definitions, because he can return to other light work, as directed by Medical-Vocational Rule 202.10.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: June 18, 2009

Date Mailed: June 22, 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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