

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2009-18431

Issue No: 2009/4031

[REDACTED] [REDACTED]
Hearing Date:

May 27, 2009

Washtenaw 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 27, 2009. Claimant personally appeared and testified. He was assisted by [REDACTED].

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 single, right-handed, 47-year-old insulin-dependent diabetic with bilateral lower extremity peripheral neuropathy and a sporadic, unskilled work history who has not been gainfully employed since 2005 ([REDACTED] stocker).
2. Claimant has a general equivalency diploma (GED) and a valid driver's license (but no vehicle); he currently lives independently in an apartment in [REDACTED].

3. Claimant has an extensive polysubstance abuse history (alcohol, marijuana, cocaine, heroin) and a past prison incarceration for heroin possession; most recently, claimant spent nine months in the county lock-up in 2008, per his hearing testimony.
4. Upon jail release claimant applied for disability-based MA/SDA on August 1, 2008.
5. When the department denied that application claimant filed a hearing request to protest the denial.
6. Claimant's hearing was held on May 27, 2009.
7. Claimant's hearing record remained open to allow for submission of his independent physical and psychological examination reports and updated treatment records.
8. On August 27, 2010, the doctors on the department's State Hearing Review Team (SHRT) issued a decision continuing claimant's disability denial which states in relevant part:

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The medical evidence of record indicates that the claimant retains the capacity to perform simple, unskilled, light work. In lieu of detailed work history, the claimant will be returned to other work.

Therefore, based on the claimant's vocational profile (younger individual, 12th grade education and history of unskilled work), MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

9. Claimant stands 5'10" tall and his weight is stable at approximately 170 pounds; at hearing, he reported full remission from illicit drug/alcohol use with ongoing participation in NA/AA.
10. Claimant has high blood pressure under good control with prescription medication (██████████), per the independent physical examination results dated August 17, 2009 (See also Finding of Fact #7 above).

11. Claimant continues to smoke against medical advice and uses an inhaler as needed for shortness-of-breath symptoms not uncommon in long term tobacco abusers who have been diagnosed with Chronic Obstructive Pulmonary Disease (COPD).
12. Claimant's August 2009 physical examination report indicates his prescribed inhaler ([REDACTED]) provides "significant benefit."
13. Claimant has a remote Hepatitis C diagnoses (1994) with no treatment as of his March 27, 2009 hearing date.
14. Claimant stated at hearing he has been involved in outpatient mental health counseling since July 2008.
15. Claimant's treatment records reveal he was briefly treated and released from a local emergency room in June 2008 after having experienced an excessive anxiety attack and his record confirms a diagnosis of Anxiety Disorder (NOS).
16. Claimant reported at hearing [REDACTED] and [REDACTED] have been prescribed for symptom management, in addition to the outpatient counseling referenced in Finding of Fact #14 above.
17. Claimant's August 2009 psychological examination report reveals no cognitive deficits with appropriate affect and clear/coherent/goal-directed speech and well-organized thinking.
18. Claimant was diagnosed with Dysthymic Disorder in partial remission; his condition was listed as guarded secondary to the polysubstance abuse history with potential for relapse; claimant's Global Assessment Function (GAF) was listed at 55 (moderate symptoms).
19. As of claimant's March 27, 2009 MA/SDA hearing date, the denial of his Social Security Administration (SSA) disability application (filed 7/23/08) was on appeal, and apparently, it remains so as of the issuance this Hearing Decision.

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines are also applied in SDA cases. They state in relevant part:

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application, claimant has the burden of proof pursuant to the following section:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

The federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical reports consistent with claimant's reported symptoms, or with his/her treating doctors' statements regarding disability or the lack thereof. These regulations state in part:

...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).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

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).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1). [SDA duration = 90 days].

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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).

Applying the sequential analysis herein, claimant would remain eligible at the first step since he has not been gainfully employed in several years. 20 CFR 416.920(b).

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling ambiguities in claimant's favor, the evidence of record establishes severity is met.

The third step of the analysis looks at whether an applicant meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not. As such, the analysis must continue.

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. This step examines the physical and mental demands of the work done by the applicant in the past. 20 CFR 416.920(e). This Administrative Law Judge again will find in favor of claimant because his combined symptoms (exertional and non exertional) may prevent him from doing the sporadic, medium exertional retail stock activities or temporary janitorial positions where he was formerly employed. As such, an analysis of the fifth step is required.

The fifth final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the medical evidence submitted, this Administrative Law Judge finds Medical-Vocational Rule 202.20 would direct a finding of not disabled. The medical documentation in claimant's file is insufficient to indicate his diagnosed conditions, standing alone or combined, would interfere with his ability to engage in other work, specifically, light unskilled work. When taken as a whole, the evidence in this file fails to meet the regulatory requirements necessary to qualify for disability-based MA/SDA because he retains the residual functional capacity to perform light work, in concurrence with the post-hearing SHRT decision issued on August 27, 2010.

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.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: September 13, 2010

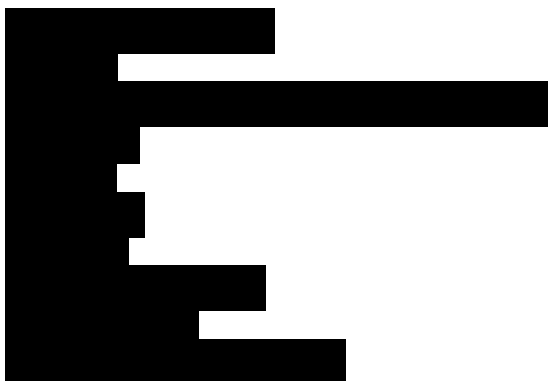
Date Mailed: September 14, 2010

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.

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