

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: 2009-1969

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 13, 2009

St Clair 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, an in-person hearing was held on January 13, 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 35-year-old male who completed 11th grade in Special Education; because claimant lost his driver's license due to unpaid tickets his fiancée and father provide all his transportation needs.

(2) Claimant's childhood IQ test scores are at the borderline level (Department Exhibit #1, pg 77).

(3) Claimant stands approximately 6'1" tall and weighs approximately 190 pounds; he is right hand dominant.

(4) Claimant has a history of bronchial asthma since childhood; he spent two days in the hospital in February 2008 (2/15/08-2/17/08) where he was treated for an acute exacerbation of shortness of breath symptoms during the previous 48 hour period (Department Exhibit #1, pgs 27-31).

(5) Claimant's respiration rate was 18 to 20 (regular), his pulse oximetry was 95% on two liters, his blood pressure was 138/90 and he was resting comfortably in no apparent distress at admission (Department Exhibit #1, pg 31).

(6) Claimant was stabilized on [REDACTED] via nebulizer and IV steroids and discharged in good condition.

(7) Claimant has two minor children who reside with their biological mother; he stated at his disability hearing he planned to move from his father's house into his fiancée's house in the near future.

(8) Claimant has an intermittent, unskilled work history (fast food/factory/tire shop) but he has not been full-time employed since he left the tire shop in 2007 because the exposure to excessive fumes, dust and chemical odors negatively affected his asthma.

(9) Claimant spent another two days in the hospital in March 2008 (3/17/08-3/19/08) for treatment of another asthmatic attack; at discharge his condition was significantly improved without wheezing or rhonchi and without need of supplemental oxygen (Department Exhibit #1, pgs 1-7 and 14).

(10) On April 4, 2008, claimant's authorized representative filed a disability-based MA/SDA application on his behalf.

(11) If approved, claimant would have been eligible for financial assistance with hospital bills, prescriptions and other medical expenses associated with his asthma treatment (MA), as well as a monthly cash grant (SDA).

(12) When claimant's application was denied, his authorized representative filed a hearing request dated August 15, 2008.

(13) Claimant's hearing was held on January 13, 2009 and the record was extended at his authorized representative's request for submission of updated evidence (Client Exhibit A).

(14) This evidence verifies claimant had an overnight hospital stay for a third asthmatic episode on October 17, 2008 (Client Exhibit A, pgs 2-8).

(15) Claimant's hospital admission records indicate he had been smoking approximately a pack of cigarettes per day, an activity strongly contraindicated by medical professionals with asthmatic patients because it significantly increases the likelihood of symptom flare-ups and disease progression (Client Exhibit A, pg 2).

(16) Claimant has no substance abuse history; additionally, he has never been involved in mental health treatment or counseling, however his treating doctor has prescribed [REDACTED] for self-reported depression in addition to the standard asthma medications (e. g.,

[REDACTED]

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).

Statutory authority for the SDA program states 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:

(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.

Michigan administers the federal MA program. In assessing MA and SDA eligibility, Michigan defers to the federal guidelines. These guidelines 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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909 [SDA duration = 90 days].

...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 medical reports consistent with claimant's reported symptoms, or with his/her treating doctor's 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).

...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).

Applying the sequential analysis herein, claimant remains eligible at the first step since he is not currently working because he left his last full-time job at the tire shop in 2007 due to medical intolerance of environmental pollutants in that work place. 20 CFR 416.920(b). As such, the analysis must continue.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds claimant's diagnosed bronchial asthma meets both. As such, the analysis must continue.

The third step of the analysis looks at whether an individual 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 past relevant work. This step examines the physical and mental demands of the work done by the claimant in the past. 20 CFR 416.920(e).

In this case, this Administrative Law Judge finds claimant cannot return to the tire shop or any workplace where excessive environmental asthmatic triggers exist. As such, the analysis must continue.

The fifth and final step of the analysis applies the biographical data of the 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 credible medical evidence presented, this Administrative Law Judge finds Medical-Vocational Grid Rule 202.17 applies and directs a finding of not disabled.

In reaching this conclusion, it is noted claimant has asthma and a borderline intellectual level. However, it is also noted claimant's prescription medication schedule would likely be capable of symptom control if claimant stopped smoking. Put simply, this Administrative Law Judge finds insufficient medical documentation to indicate claimant's conditions would prevent him from engaging in any number of light, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. In short, when

considering claimant's documented impairments in light of his young age, borderline intelligence and sporadic work experience, claimant's file fails to rise to the level necessary to qualify for MA/retro-MA/SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's April 8, 2008 MA/retro-MA/SDA application based on a finding he does not meet the rules necessary to qualify for said assistance.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: December 30, 2009

Date Mailed: December 30, 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.

2009-1969/mbm

MBM/db

cc:

