

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: 2009-20248
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 28, 2009
Mecosta 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 July 28, 2009. Claimant personally appeared and testified with assistance from his case manager at [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) 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, 31-year-old nonsmoker with a high school diploma (Special Education) who lives independently in low income housing.
- (2) Claimant has a valid driver's license and a roadworthy vehicle.

(3) Claimant stands approximately 6'2" tall and is morbidly obese at approximately 420 pounds (BMI=53.9).

(4) Claimant has high blood pressure, adequately controlled with [REDACTED] (Department Exhibit #1, pgs 91 and 92).

(5) Claimant also has a wide-based gait secondary to his obesity, but he needs no ambulatory devices to assist in walking (Department Exhibit #1, pg 91).

(6) Claimant would like to undergo gastric bypass surgery but he has no medical insurance (Department Exhibit #1, pg 89).

(7) Claimant was employed part-time at a seasonal job as a scorer for a trapshooting association between May and September, 2008 (Department Exhibit #1, pg 98).

(8) Claimant applied for disability-based medical insurance (MA) on October 16, 2008 (the month after his trapshooting scorer job ended)(See also Finding of Fact #7 above).

(9) As of claimant's disability denial hearing date (7/28/09) he was working 5 days a week, 5 ½ hours daily as a custodial employee through [REDACTED] claimant's rate of pay is [REDACTED] per hour.

(10) Claimant alleges pain in his back, legs and knees causes him to be unable to engage in any type of substantial gainful work activity.

(11) In May 2008 (the month claimant started his trapshooting scorer job), he underwent an independent consultative physical examination (Department Exhibit #1, pgs 1-5).

(12) Claimant was cooperative and his immediate/recent/remote memory was intact; he exhibited normal concentration with appropriate judgment and insight (Department Exhibit #1, pg 4).

(13) Claimant also exhibited intact grip strength and dexterity in both upper extremities, but some tenderness was noted in both claimant's tibial plateaus and in his left ankle, not uncommon for morbidly obese patients in those most critical load-bearing areas.

(14) The examining doctor concluded:

The patient did have diminished range of motion in his back and legs. Much of this appears to be due to his body habitus. He may have some early onset of degenerative joint disease but there was no laxity. He does have some tenderness over the medial left ankle due to a recent injury. At this point, he is undergoing supportive care. Contributing to this is his body habitus as he is 415 pounds and 72 inches tall. At this point, he is still able to do exertional activities and activities at home. His current prognosis is guarded but stable and would be remediable with weight reduction (Department Exhibit #1, pg 2).

(15) Claimant stated at hearing he uses two prescription strength [REDACTED] daily for pain management.

(16) Claimant's only other listed prescription medications as of his hearing date were [REDACTED] for high cholesterol management, [REDACTED] as needed for excessive stomach acid (GERD), and a fast-acting inhaler approximately three times weekly for his shortness of breath symptoms.

(17) Claimant stated at hearing he has no appetite disturbances and he gets between four and five hours of sleep per night.

(18) Part of claimant's participation with [REDACTED] included a referral to outpatient mental health counseling in August 2008; he participates one time per week for approximately one half hour; no psychiatric medications are being prescribed.

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

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.

...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).

...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).

...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 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.

...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).

...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.

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we

can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

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. Claimant’s current prescription medication schedule appears fully capable of adequately managing his symptoms, in light of the documented impairments existing in the medical records submitted to date.

Claimant simply does not qualify for the MA coverage he seeks because he has not presented any objective medical records to establish the existence of a severe physical or mental condition which would prevent him from performing any number of unskilled jobs currently existing in the national economy like the custodial job he is currently doing. In fact, when taken as a whole, the record suggest claimant may be engaging in symptom magnification for secondary gain (i. e., “insurance”). Unfortunately, claimant’s medical records do no support a finding that he is disabled as that term is defined under the governing rules. Consequently, claimant’s disputed application must remain denied.

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 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: August 24, 2009

Date Mailed: August 25, 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.

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