

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: 2009-20619  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 24, 2009  
Genesee 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 June 24, 2009. Claimant personally appeared and testified. He was assisted by [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by 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 filed an MA/retro-MA application on October 16, 2008, alleging his residuals from multiple orthopedic injuries cause him to be completely unable to engage in any type of substantial gainful work activity.

(2) Claimant is a divorced, 50-year-old high school graduate and union brick layer (heavy exertional activity) who has been unemployed since 2005.

(3) Claimant spent eight days in the hospital in October, 2008 (10/6/08-10/13/08) because he broke his neck while cutting down trees when an approximately foot-sized diameter tree branch struck him (Department Exhibit #1, pgs 156 and 186).

(4) Specifically, claimant's cervical CT scan revealed left anterior and posterior C1 arch fractures with comminution and displacement of the left lateral mass at C1/C2, as well as multiple bilateral lamina fractures posteriorly at C2 (Department Exhibit #1, pg 17).

(5) Claimant was intubated in the neurotrauma intensive care unit and placed on mechanical ventilation for airway protection (Department Exhibit #1, pg 91).

(6) On October 8, 2008, a halo and halo vest were placed (Department Exhibit #1, pg 167).

(7) By April 16, 2009 (6 months post injury), claimant had been out of his halo and J collar for approximately one month (Client Exhibit A, pg 3).

(8) On examination that day (4/16/09), claimant's neck rotation was limited to 30 degrees bilaterally with only about 10 degrees in each direction of lateral bending and basically no extension past neutral (Client Exhibit A, pg 3).

(9) Although claimant went through physical therapy, his cervical range of motion has not improved, and thus, he has given up driving completely secondary to safety concerns.

(10) In addition to claimant's newest fractures, his March, 2009 follow-up cervical CT scan found multiple pre-existing spondylitic and discogenic degenerative changes, greatest at C5-6 and C6-7 (Client Exhibit A, pg 5).

(11) By April, 2009, the doctors were able to wean claimant to [REDACTED] twice daily; at hearing, claimant testified [REDACTED] (as needed) had been added to his medication schedule with very little decrease in his chronic pain levels (8 daily on the 1-10 pain scale).

(12) Claimant's pain medication causes dizziness and lethargy and claimant remains significantly depressed and experiences frequent loss of appetite due to chronic pain.

(13) Claimant stands approximately 5'5" tall and weighs approximately 150 pounds; he is right hand dominant.

(14) In 2006, claimant was involved in a motorcycle/deer accident; he suffered a right wrist fracture and a right shoulder separation (Department Exhibit #1, pg 167).

(15) Claimant's overhead reaching is not diminished bilaterally; however, he is unable to lift anything with his right (dominant) arm and his shoulder continues to pain him and spontaneously "pops out" with very little exertion/warning, causing additional intermittent pain during those times.

(16) A thoracic CT scan done while claimant was hospitalized with his broken neck was positive for anterior wedge fractures at T4-6 with minor compression in his superior end plates and minor arthritic spurring off the lower centra (Department Exhibit #1, pgs 48, 84 and 167).

(17) A contemporaneous lumbar spine CT scan also revealed minor anterior and lateral osteophytic spurring off the center throughout claimant's lumbar spine with moderate arthritic involvement of claimant's posterior facet joints in his mid and lower lumbar spine (Department Exhibit #1, pg 50).

(18) Claimant testified at hearing he suffered a 2005 brain hemorrhage and was put in a self-induced coma by his treating hospital physicians at that time, but no documentation of this event is contained in the medical records submitted to date.

(19) However, an October 6, 2008 CT scan of claimant's head did reveal a left frontal scalp hematoma (Department Exhibit #1, pg 17).

(20) Claimant reports progressive worsening of his daily pain secondary to his extensive orthopedic injury history.

(21) Claimant's other symptoms include lightheadedness, poor memory, difficulty concentrating, confusion, frustration and loss of anger control (he frequently "snaps," per his mother's testimony).

(22) Additionally, claimant's ability to sit, stand, walk, bend, squat, push/pull and navigate stairs has been severely and permanently compromised by his injuries.

#### 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 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.

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).

...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).

...We will consider your statements about the intensity, persistence, and limiting effects of your symptoms, and we will evaluate your statements in relation to the objective medical evidence and other evidence in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(4).

...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).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...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 non-exertional symptoms he describes 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/retro-MA at Step 1, because he is not currently employed and he has not been gainfully employed since 2005.

At Step 2, the objective medical evidence clearly shows claimant's chronic, intractable pain and range of motion limitations have lasted the necessary durational periods required to continue this inquiry into his alleged disability. Furthermore, claimant is still in chronic pain, despite medication compliance.

At Step 3, claimant's orthopedic impairments do not appear to rise to the level necessary to be specifically 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 heavy exertional past relevant work as a union brick layer. This conclusion is based not only on the objective medical evidence, but also on the credible testimony received at hearing. Certainly, a return to this type of work would most likely cause increased pain and could result in additional injury or further decline in claimant's already debilitated condition. Consequently, an analysis of Step 5 is required.

At Step 5, an individual's age, education, work experience and residual functional capacity are assessed in relation to the documented impairments and/or permanent residuals stemming from them. 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, claimant has shown, by clear and convincing documentary evidence and credible testimony, his exertional and non-exertional limitations are severe enough to prevent him from engaging in even sedentary work. Consequently, claimant meets the MA durational criteria and disability standards 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 disabled for MA/retro-MA eligibility purposes.

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

- (1) The department shall process claimant's October 16, 2008 MA/retro-MA application, and shall award him all 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 improvement in August, 2010.
- (3) The department shall obtain updated medical evidence from claimant's treating physician, orthopedic specialists, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

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

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

Date Signed: July 8, 2009

Date Mailed: July 9, 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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