

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: 2009-21262

Issue No: 4031

Case No:

[REDACTED]

Load No:

Hearing Date:

July 14, 2009

Gladwin 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 14, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by 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 30-year-old high school graduate with approximately two years of college and an unskilled work history in well drilling (trencher operator), grocery store stocking (produce department), telemarketing (police/fire donations) and factory painting (small metal parts).

(2) Claimant has not been employed since he left the parts factory in April, 2007.

(3) Claimant is in the process of divorce, he has no driver's license and he currently resides with his mother in [REDACTED].

(4) Claimant applied for a disability-based monthly cash grant (SDA) on September 2, 2008 alleging he is completely unable to perform any type of substantial gainful work activity due to debilitating lower lumbar/cervical spine pain (Department Exhibit #1, pg 20).

(5) Claimant has never been involved in any type of mental health treatment or counseling and no severe mental/emotional/cognitive impairments are evidenced by the medical records submitted to date.

(6) Claimant's weight was documented at 170 pounds (5'10") on September 13, 2008 and 163 pounds on November 25, 2008 (Department Exhibit #1, pgs 20 and 32).

(7) Claimant's weight at his disability application denial hearing eight months later (7/14/09) was 143 pounds, per self report.

(8) Claimant's 2005 bone scan was normal but his lumbar spine MRI scan revealed some disc degeneration with a small subligamentous disc protrusion; these impairments are generally associated with some pain but not severe chronic pain, per the consulting physiatrist (specialist in physical medicine)(Department Exhibit #1, pg 195).

(9) This physiatrist noted:

At the present time, the patient I believe has what we call a chronic pain syndrome. He really does not have any good mechanical problem to explain his symptoms, and as such it falls into the nebulous diagnosis realm of chronic pain syndrome...Again, generally with chronic pain situations, etiology is not understood. We think that there may be psychological factors involved and as such, if the patient does not improve with blocks a referral to [REDACTED] may be worthwhile for stress reduction.

As far as medications, I will let [REDACTED] continue writing the [REDACTED]. I have no trouble if it is changed to something like [REDACTED] or time release [REDACTED] of the generic type, but generally as stated before, I think the patient should ultimately have his medications decreased and stopped (Department Exhibit #1, pg 195)(See also Finding of Fact #5 above).

(10) A more recent independent consultative examination conducted on November 25, 2008 indicates claimant's updated lumbar spine MRI scan was normal but his updated cervical spine MRI scan revealed spondylosis at C5-C6 and C6-C7 with a right paramidline disc protrusion and foraminal narrowing at C5-C6, as well as a right paramidline bulge at C6-C7 (Department Exhibit #1, pgs 20, 21 and 41).

(11) Claimant's previous lumbar spine x-rays (1/10/08) are consistent with his updated lumbar scan, neither of which evidence any abnormalities (Department Exhibit #1, pgs 20 and 38).

(12) Claimant's previous cervical x-rays (1/10/08) are consistent with his updated cervical scan, again evidencing only mild cervical spondylosis and disc bulging without nerve root impingement (Department Exhibit #1, pgs 20, 21 and 39).

(13) Claimant's September, 2008 medication list indicates he takes [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED] three times daily, as confirmed again in November, 2008 by the independent consultative physician (Department Exhibit #1, pgs 20 and 33).

(14) Claimant's medical records document lower lumbar pain complaints dating back to 2000 (Department Exhibit #1, pg 201).

(15) Lumbar spine x-rays taken on August 26, 2004 were significantly unchanged when compared to claimant's September 12, 2000 series (Department Exhibit #1, pg 201).

(16) Claimant's 2004 x-rays showed no osteolytic or osteoblastic lesions and well-maintained vertebral height/alignment with intact pedicles and intact transverse and spinous processes (Department Exhibit #1, pg 102).

(17) Likewise, claimant's 2005 thoracic MRI scan and comparison 2007 thoracic x-ray series were normal, as was an ECG scan done in 2005 (Department Exhibit #1, pgs 48, 199 and 200).

CONCLUSIONS OF LAW

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).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals.

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads 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 has adopted the federal regulations governing Social Security disability allowances when determining whether an individual qualifies for SDA assistance.

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).

...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, the applicant 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 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).

...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). [Note: SDA duration = 90 days].

...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).

Applying the above-referenced sequential analysis herein, claimant remains eligible at the first step since he is not currently working, and has not been gainfully employed since 2007. 20 CFR 416.920(b). The analysis continues.

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 any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. The analysis continues.

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. The analysis continues.

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).

In this case, this Administrative Law Judge finds no impairment or combination of impairments in claimant's case that would render him physically or mentally incapable of returning to sedentary work as a telemarketer, which requires essentially no heavy lifting or

excessive standing, walking, pushing/pulling, etc. Furthermore, 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 prescriptions appear more than adequate for pain control in light of his documented orthopedic impairments. As such, this analysis could end at Step 4 with a finding of not disabled. However, even if an analysis of Step 5 was required claimant would be unsuccessful in establishing an SDA disability allowance.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine any residual functional capacity the applicant may have to do other work. 20 CFR 416.920(f). After a careful review of the credible medical evidence submitted, this Administrative Law Judge finds Medical-Vocational Rule 202.20 directs a finding of not disabled because insufficient medical documentation has been presented to indicate claimant's existing conditions would interfere with his ability to engage in a wide variety of other work, specifically, light unskilled work as those terms are defined at 20 CFR 416.967(b) and 20 CFR 416.968(a). As such, claimant's disputed SDA 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 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: July 16, 2009

Date Mailed: July 16, 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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