

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: 2009-24654
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 13, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 August 13, 2009. Claimant personally appeared and testified. Also appearing on claimant's behalf was his friend [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On February 23, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On April 1, 2009, the Medical Review Team denied claimant's MA application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909. Claimant's SDA application was approved as his physical or mental impairment prevents employment for 90 days or more per PEM Item 261. SDA review date was set for September, 2009.

(3) On April 7, 2009, the department caseworker sent claimant notice that his MA application was denied.

(4) On April 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 15, 2009, the State Hearing Review Team (SHRT) denied claimant's MA application stating he was capable of performing other work, namely sedentary and light work per Vocational Rules 202.20 and 201.27. SHRT also cited materiality of drug and alcohol abuse per 20 CFR 416.935.

(6) Claimant submitted additional medical information following the hearing which was forwarded to SHRT for additional review. On November 30, 2009, SHRT once again determined that the claimant was not disabled, as he was capable of sedentary work per Vocation Rule 201.27.

(7) Claimant is a 41 year-old man whose birth date is [REDACTED]. Claimant is 6' 1" tall and weighs 315 pounds. Claimant has 12th grade education and attended auto mechanic classes, and can read, write and do basic math.

(8) Claimant states that he last worked in year 2007 for U-Haul in sales and rental of equipment, job he had for 3 years and that he quit because he had no possibility of advancement due to a criminal record. Claimant also worked for the same employer for 1 year in 2001, before

he went to federal prison until 2004. Claimant worked at a car shop and for temporary services in the 1990's.

(9) Claimant current lives with a friend and receives SDA and food stamps. Claimant has a driver's license but is not currently driving due to a recent hip surgery.

(10) Claimant alleges as disabling impairment hip problems, namely right hip replacement surgery on June 11, 2009, and possibility of future left hip replacement.

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;

- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since year 2007. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a

minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a General Visit note of March 3, 2009, indicating claimant was seen to establish care, as he has not had a doctor for years. Medical Examination Report for this date quotes the claimant as reporting a 1 year history of right hip pain, and that he has seen a surgeon for this. Claimant is 73" tall and weighed 326 lbs., with a blood pressure of 106/80. Claimant's examination areas are normal with the exception of discoloration of teeth and gums, deviated septum to the right, and pain in the right hip. Claimant's condition is listed as stable, he is scheduled for surgery but recovery will take a while. Claimant can lift/carry up to 10 lbs. frequently, and stand/walk less than 2 hours in an 8-hour work day. Claimant can use both of his hands/arms for repetitive actions, but cannot operate foot/leg controls with his right foot due to pain in his right hip. Claimant has no mental limitations. Claimant's medications are Ultram, Motrin and Tylenol.

Claimant was seen by a surgeon for right hip pain. Review of claimant's x-rays revealed severe right hip osteoarthritis and moderate left hip osteoarthritis. A total hip arthroplasty would provide the claimant the opportunity for improved functional capacity, range of motion and strength. Surgeon explained to the claimant what would be involved in the surgery, risks and complications.

Claimant had the right total hip replacement surgery on June 11, 2009. X-ray review of June 25, 2009, indicates that hip components appear well aligned and seated, without evidence of complications.

July 29, 2009, routine post-operative visit with the P.A. quotes the claimant as saying his right hip is doing okay and that, overall, he is progressing well. Claimant reported he does have

a mild amount of discomfort and soreness along the lateral aspect of his right hip near the incision, but denied any pain in the groin or thigh region. Claimant stated he has been walking for exercise and has been able to perform his daily activities without much discomfort. On physical examination of the claimant's right hip, he did not have any pain with gentle range of motion of the hip, no pain or tenderness, and he also had good strength and no pain with resisted hip flexion.

Claimant was examined again on [REDACTED] and stated that his right hip is doing okay. X-rays were ordered, obtained and reviewed on this date. These demonstrate the cementless total hip replacement implant components to be in good position and well seated. There does not appear to be any evidence of dissolution of the bone, lucency or wear noted. Impression is that of severe right hip osteoarthritis status post right total hip arthroplasty, and moderate left hip osteoarthritis. Recommendation is for the claimant to continue to increase his activities as tolerated, and to be weaned off his pain medication. Claimant was to be seen in nine months for routine follow up visit.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. This Administrative Law Judge finds that claimant has met his burden of proof at Step 2, and the analysis continues.

At Step 3 the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of

Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge concludes that it appears that the claimant would be able to perform his past relevant work. Claimant testified that he worked at U-Haul in sales and rental, which would involve mainly sedentary duties, and that he held this job for 3 years, up to 2007. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached, and the claimant could be denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least sedentary work if demanded of him. While the claimant testified that he is severely physically limited due to his hip issues, most recent medical information provided by the claimant from September, 2009 indicates that he is doing well following his right hip surgery, and that he is to increase his activities as tolerated. Claimant also testified that he may need left hip surgery, however medical information of September, 2009 indicates he has moderate left hip osteoarthritis and no surgery plan is mentioned. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual

functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform at least sedentary work. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 41), with high school education and an unskilled work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

The claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). However, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of sedentary work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 18, 2010

Date Mailed: February 22, 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 mailing 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.

IR 

cc:

