

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: 2009-3165

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 19, 2009

Tuscola County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 February 19, 2009.

ISSUE

Whether claimant has established disability for Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

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

(1) August 26, 2008, claimant applied for MA and SDA. Claimant submitted medical records for department consideration.

(2) October 13, 2008, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) October 16, 2008, the department sent claimant written notice that his application was denied. Department Exhibit C.

(4) October 22, 2008, the department received claimant's timely request for hearing.

(5) November 19, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) February 19, 2009, the telephone hearing was held. Prior to the close of the record the claimant requested that the record be left open for additional medical evidence. Claimant waived his right to a timely hearing decision.

(7) March 20, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, March 20 2009.

(8) Claimant asserts disability due to impairments caused by nerve damage to his leg and a spinal fusion that took place in August 2008.

(9) Claimant testified at hearing. Claimant is 29 years old, 6'3" tall, and weighs 198 pounds. Claimant completed the ninth grade and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. He cares for his needs at home.

(10) Claimant's past relevant employment has been as a cashier, stock person, liquor store manager, and in factory labor.

(11) May 15, 2008 medical treatment records indicate that claimant is positive HIV. He has problems with lesions on the hands and soles of his feet. The condition is being treated and he remains off HIV medications. Department Exhibit A, pg 42.

(12) August 22, 2008, claimant underwent a left L4 hemilaminectomy, removal of the L4-L5 disc, placement of an anterior inner body fusion using Osteo Mesh graft at the L4-L5 level and a posterior pedicle screw fusion at L4 and L5 with poster lateral facet fusion at L4-L5.

August 28, 2008, claimant underwent a physical examination that revealed 1/5 strength of the dorsiflexor of his left foot with decreased sensation in the L5 distribution pattern. Doctor opines that acute left foot drop occurred suddenly about a week or so following the surgical decompression and doctor suspects claimant likely has an extruded disc at the surgical site. Doctor plans to hospitalize claimant for pain management. August 30, 2008, claimant underwent a second back surgery due to recurrent disc herniation at left L4-L5 with a displacement of the left L4 pedicle screw. Department Exhibit A, pgs 28-37, 58. September 15, 2008, claimant underwent an evaluation by his neurosurgeon. Doctor observed that claimant has a bit of foot drop that seems to be improving a little bit. Strength is about a 5-/5 on the left and 5/5 on the right. His incision is significantly better. He is using a cane and otherwise doing quite well. Neurologically, he is stable and doctor finds no evidence of any kind of neurological losses. Department Exhibit A, pg 13. November 10, 2008, claimant was examined by his neurologist. Claimant reports that he still has a lot of discomfort but is able to walk with a cane. Doctor is concerned that on examination claimant appears to be doing well but x-rays show a little lucence around the pedicle screws. Doctor is concerned that there may be a change, hopefully not a loosening. Claimant Exhibit A, pg 7. January 13, 2009, claimant underwent MRI of his lumbar spine that revealed left unilateral dorsal metallic rod fusion with intrapedicular screw fixation and satisfactorily positioned Optimesh intervertebral fusion L4-L5; severe L5-S1 disc space narrowing. Claimant Exhibit A, pg 5. January 13, 2009, claimant is again examined by his neurosurgeon. On exam, the incision is not painful and claimant's range of motion is quite excellent. The entire examination is completely unremarkable. Doctor indicates that claimant is able to gradually increase his activities but should continue to be off work. Doctor believes

claimant should find another position rather than stocking at a liquor store. Claimant Exhibit A, pg 1.

(13) August 29, 2008, claimant underwent an MRI of the lumbar and thoracic spine. In pertinent part, the procedure revealed a small to moderate left T11-T12 disc herniation encroaching upon the left T12 and possibly T11 nerve roots. Department Exhibit A, pgs 15-16.

### 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 do 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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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. Accordingly, he is not disqualified at Step 1.

At Step 2, the objective medical evidence of record establishes that claimant underwent back surgery in August 2008. His initial surgery failed and he had a second surgery. Following surgery, claimant's activities were severely restricted. He was able to walk with a cane and had

significant weakness in his left lower extremity. By November 2008, claimant was considered to be improving. By January 2009, the medical evidence shows that claimant's physical examination was unremarkable and he had no neurologic losses. The objective medical evidence of record indicates that claimant has a small left central paracentral T11-T12 herniated nucleolus pulposus with mild effacement of the CSF space. The objective medical evidence of record indicates that claimant is HIV positive, but does not require HIV medications. Finding of Fact 10-13.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a cashier, stock person, liquor store manager, and factory worker. The objective medical evidence of record does not establish a severe impairment of the required duration. See discussion at Step 2 above. Finding of Fact 9-13.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment as a liquor store stock person. The objective medical evidence of record is not sufficient to establish that claimant has severe impairments that prevent him for a period of 12 months or more from

engaging in the duties required of him by his past relevant employment as a cashier.

Accordingly, claimant is disqualified from receiving disability at Step 4.

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).

At Step 5, the objective medical evidence of record indicates that claimant underwent two back surgeries during August 2008. He has had an unremarkable recovery period following his second surgery. In January 2009, his neurologist indicated an unremarkable medical exam with no neurologic losses. See discussion at Step 2 above, Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least sedentary work activities. Considering claimant's vocational profile (younger individual, limited education, unskilled work history) and relying on Vocational Rule 201.24, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

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).

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:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
  - (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.
  - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
  - (d) A person receiving 30-day post-residential substance abuse treatment.
  - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
  - (f) A person receiving special education services through the local intermediate school district.
  - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
  - (b) Have a monthly budgetable income that is less than the payment standard.

- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

## **DISABILITY – SDA**

### **DEPARTMENT POLICY**

#### **SDA**

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

**Note:** There is no disability requirement for AMP. PEM 261, p. 1.

After careful examination of the record, the Administrative Law Judge decides that claimant has severe impairments that prevent work for 90 days or more, beginning with his month of application and continuing through December 2008. Neurology treatment records indicate that in January 2009, claimant exam is unremarkable and he has recovered from his

surgery. See discussion at Step 2 above. Therefore, claimant meets the disability requirements to qualify for SDA based on disability beginning August 2008 and continuing through December 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant has not established disability for purposes of Medical Assistance. Claimant has established disability for State Disability Assistance effective August 2008 and continuing through December 2008.

Accordingly, the department's action is, hereby, partially REVERSED. The department is to initiate a determination of claimant's financial eligibility for SDA beginning the month of his application and continuing through December 2008 in compliance with this Decision and Order and department policy. No medical review is necessary as the approval is for a closed period.

/s/ \_\_\_\_\_  
Jana A. Bachman  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: April 7, 2009

Date Mailed: April 10, 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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