

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: 2009-34265

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 3, 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 November 3, 2009. Claimant and his significant other personally appeared and testified. He was assisted by [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 43-year-old insulin-dependent diabetic (diagnosed at age 20) with Dyslexia who was in Special Education all through public school; he was socially promoted to high school graduation but remains functionally illiterate (Department Exhibit #1, pg 19).

(2) Claimant has been diagnosed with bilateral upper and lower neuropathy secondary to his diabetes and he experiences ongoing pain/numbness despite compliance with pain medication ([REDACTED]).

(3) On November 10, 2008, claimant's authorized representative filed an MA/retro-MA application on his behalf alleging his neuropathy and its residuals render him disabled under the governing rules.

(4) Claimant has an unskilled, seasonal work history in landscaping but he has not been substantially gainfully employed since 2008.

(5) Claimant stands 5'10" tall and is mildly obese at 214 pounds (BMI=30.77); he is right hand dominant.

(6) In November 2008, claimant was hospitalized for several days for treatment of a nonhealing right toe ulcer and uncontrolled diabetes.

(7) A right toe x-ray revealed a comminuted fracture and arterial studies revealed small vessel occlusive disease in claimant's right toe; additionally, significant cellulitis and active osteomyelitis were confirmed by MRI (Department Exhibit #1, pgs 23-24 and 49-50).

(8) The severity of claimant's condition necessitated amputation of his right toe on November 5, 2008, followed by wound closure and grafting on November 11, 2008 (Department Exhibit #1, pgs 23 and 24).

(9) Claimant was discharged on crutches with weightbearing prohibited on his right leg (Department Exhibit #1, pg 24).

(10) A March 2009 follow-up report (four months post-surgery) indicates claimant was still using a walker for ambulation and balance secondary to bilateral paresthesia of his feet due to severe neuropathy and his symptoms remained unchanged (Department Exhibit #1, pgs 10 and 18).

(11) Additionally, claimant still had a small unhealed wound at that time approximately three millimeters wide by one centimeter long which closed completely by May 27, 2009 (Department Exhibit #2, pg 6).

(12) A physical function assessment performed on July 14, 2009 verifies claimant's continued generalized weakness, frequent falls, decreased walking tolerance and balance difficulties, as well as difficulties with bending, stooping, squatting, pushing, pulling, lifting and basic daily living activities like house chores and yard work (Department Exhibit #2, pg 9).

(13) Claimant needed to sit and rest and take frequent breaks through the testing due to hip pain, foot discomfort and shortness of breath (Department Exhibit #2, pg 10).

(14) Claimant's second and third right toes have now begun to atrophy in a curled position; consequently, his treating physician has prescribed a cane at all times for ambulation and balance, but claimant says he continues to use his walker instead because he falls frequently without it.

(15) An October 19, 2009 Medical Examination Report (DHS-49) completed by claimant's treating doctor nearly one year post-surgery limits claimant's standing and walking ability to less than two hours in an eight-hour workday (Client Exhibit A, pg 2).

(16) Claimant's long-term partner needs to assist him with personal care activities including getting in/out of bed and/or chairs as well as assisting him with dressing, grooming and bathing functions.

(17) Claimant must elevate his lower extremities after approximately 25 minutes of sitting to control excessive swelling, which is another ongoing symptom related to his severe peripheral neuropathy.

(18) In addition to physical problems, claimant's July 3, 2009 eye examination confirms diabetic macular edema, early glaucoma and early bilateral cataracts (Department Exhibit #2, pgs 12-14).

(19) On November 6, 2009, the department's State Hearing Review Team (SHRT) issued a post-hearing decision continuing claimant's disability denial based on a finding he is capable of light exertional work activity on a sustained basis, defined as follows:

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).

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.

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).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier-of-fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier-of-fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant is not employed; consequently, the analysis must continue.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical limitations upon claimant’s ability to perform basic work activities.

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.

In the third step of the sequential consideration of a disability claim, 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).

In the fourth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical findings, that claimant cannot return to landscaping, which is the only work he's ever done.

In the fifth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds

that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

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 does not meet the MA disability standard necessary to qualify for application approval.

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

(1) The department shall process claimant's disputed application and shall award him all of 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 November, 2011.

(3) The department shall obtain updated evidence from all claimant's treating sources regarding his continued progress and prognosis at review.

(4) The department shall schedule claimant for an independent functional evaluation at the time of review to compare his current status with the evaluation done in July 2009.

/s/

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

Date Signed: December 2, 2009

Date Mailed: December 8, 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

cc:

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