

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: 2009-36994

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 3, 2010

Roscommon 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 March 3, 2010. Claimant and his father personally appeared and testified.

ISSUE

Did the department properly decide at application claimant is not disabled for potential Medicaid (MA)/retro-MA eligibility purposes?

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 December 29, 2008, claimant applied for disability-based MA/retro-MA.
- (2) When the department denied claimant's application he filed a timely hearing request to protest that denial.
- (3) Claimant's hearing was held on March 3, 2010.

(4) Claimant is a single, 47-year-old college graduate with a history of chronic pain and multiple lumbar spine surgeries secondary to an April 1985 motor vehicle accident (Client Exhibit B, pg 6).

(5) Claimant was employed in a variety of sales positions until 2008, when he could no longer physically perform the job duties associated with those positions.

(6) In 1985, claimant sustained an L3 burst fracture resulting in incomplete paraplegia which required posterior spinal stabilization with the Harrington Rod System followed by extensive rehabilitation, during which, claimant essentially had to relearn to walk (See also Finding of Fact #4 above).

(7) In 1987, the Harrington Rod System was removed and claimant returned to work despite chronic pain until 2005, when he experienced sudden onset back/leg pain again requiring surgery (an L1-L2 hemilaminectomy/microdiscectomy)(Client Exhibit B, pg 6).

(8) After this procedure claimant continued to work sporadically as pain dictated; additionally, his treating orthopedic specialist deemed use of a cane medically necessary for balance/stability and claimant has used a cane since then.

(9) In December 2008 (12/11/08-12/18/08) claimant was again hospitalized in intractable lumbar spine pain with upper and lower extremity pain/tingling/numbness (radiculopathy).

(10) While hospitalized, claimant also was treated for left lower lobe pneumonia (Department Exhibit #1, pgs 3 and 4).

(11) Additionally, outpatient cervical and lumbar spine CT scans and myelograms were scheduled on February 12, 2009, to ascertain claimant's current spinal condition/prognosis (Department Exhibit #1, pgs 5-8).

(12) The objective cervical spine tests verify severe, degenerative disc disease at multiple levels, as well as C6-C7 and C7-T1 disc herniations which indent upon claimant's corresponding nerve roots (Department Exhibit #1, pg 7).

(13) The objective lumbar spine tests verify severe degenerative disc disease at multiple levels, as well as disc herniations at L4-5 and L1-L2 with bilateral foraminal narrowing at L5 due to disc height loss; annular bulging and osteophytic spurring are also noted at L5 (Department Exhibit #1, pg 6).

(14) During this time (late 2008/early 2009), the department referred claimant to [REDACTED], and they responded to claimant by letter dated January 28, 2009, as follows:

This letter is to let you know that your case with [REDACTED] is being closed. This decision was made because your condition has become too severe and you are unable to benefit from MRs services at this time (Client Exhibit B, pg 11).

(15) Claimant's current pain medication [REDACTED] has been recently upped from 2 mgs four times daily to 4 mgs four times daily with little positive impact on claimant's chronic daily pain.

(16) Additionally, this medication causes claimant the following side effects: (1) lack of concentration; (2) lightheadedness; (3) dizziness; (4) confusion; and (5) nausea.

(17) In April 2009 (4/23/09-4/28/09), claimant underwent his fourth lumbar spine surgery (Client Exhibit A, pgs 382-384).

(18) Multiple areas of claimant's spine were worked on, but most notably, claimant's surgeon performed posterior interbody fusions at L1-L2 and L5-S1 using BMP, autograft and allograft support with placement of an intervertebral disc space cage at L1-L2 on the right (Client Exhibit A, pg 384).

(19) Seven months later, on November 3, 2009, claimant underwent an independent physical examination scheduled by the local office to assess claimant's disability status (Department Exhibit #3, pgs 1-7).

(20) The examining doctor verified claimant's need for a cane, and also, he noted significant range-of-motion limitations, summarizing as follows:

Lower extremity paralysis and degenerative arthropathy:

He does have residual weakness in both legs with reflexive changes but there was no atrophy or sensory loss. He does require the use of his cane to ambulate however. Even with the use of the cane, he walks with a guarded gait. He did have difficulty doing orthopedic maneuvers due to this. Unfortunately, his long term prognosis is poor from an orthopedic standpoint and is most likely at risk for developing continued progression of disease (Department Exhibit #3, pg 5).

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.

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.

...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).

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).

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).

Based on Finding of Fact #1-#20 above, this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his spinal impairments meet or equal Listing 1.04(A):

1.04 *Disorders of the Spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in deciding at application claimant is not disabled for potential MA/retro-MA eligibility purposes.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and processing to determine whether claimant met all of the

other financial and non-financial eligibility factors necessary to qualify for assistance under his December 29, 2008 MA/retro-MA application. **SO ORDERED.**

/s/

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

Date Signed: March 23, 2010

Date Mailed: March 24, 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 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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