

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: 2009-37224

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 19, 2009

St Joseph 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 November 19, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and 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 a never married, 32-year-old father of three minor daughters with limited visitation; he lives alone in subsidized housing in [REDACTED] (Department Exhibit #1, pgs 36, 41, 60 and 62; Client Exhibit A, pg 76).

(2) Claimant has a high school diploma and an unskilled work history (general labor/fork lift driver) but he has not been employed anywhere since 2006, per self report at hearing (Department Exhibit #1, pgs 37 and 38).

(3) Claimant stands 5'11" tall and is morbidly obese at 330 pounds (BMI=46.0); he is right hand dominant (Department Exhibit #1, pg 37).

(4) Claimant spent an overnight in the hospital (2/19/07-2/20/07) upon complaints of seizure activity (Department Exhibit #2, pgs 32 and 33).

(5) On January 26, 2007, claimant was treated in a local Emergency Room (ER), again reporting seizure activity (Department Exhibit #1, pgs 216 and 224).

(6) Claimant's treating doctors subsequently conducted CT and MRI scans of claimant's brain, as well as EEG testing, all of which came back negative, as did an updated MRI brain scan done on February 11, 2008 (Department Exhibit #1, pg 67; Department Exhibit #2, pgs 27 and 31-35).

(7) On August 26, 2008, claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA) because his minor daughters no longer resided with him, thus requiring closure of his caretaker-relative public assistance (MA/FIP)(Department Exhibit #1, pgs 14, 29 and 75).

(8) Claimant alleges he is disabled due to chronic right shoulder, lower back and right ankle pain, combined with reported seizure activity and ongoing depression.

(9) Claimant has a history of substance abuse treatment for [REDACTED] use, and also, he reported testing positive on a January 24, 2008 urine drop (Department Exhibit #1, pg 60).

(10) Claimant was not engaged in any mental health treatment or counseling as of his application month (8/08), or his subsequent hearing month (11/09); however, claimant's treating doctor is prescribing anti-depressants for self-reported depression/anxiety

[REDACTED]

(11) Claimant has high blood pressure (not uncommon in morbidly obese patients) with a history of medication noncompliance (Department Exhibit #1, pg 29; Department Exhibit #2, pgs 28 and 34).

(12) In February 2007, claimant was seen for follow-up after his January 2007 pseudoseizure episodes (Department Exhibit #2, pgs 34 and 35)(See also Finding of Fact #4-#6 above).

(13) The examining doctor speculated claimant's fluctuating blood pressures were the cause of most of his seizure problems, and he expressed to claimant the importance of medication compliance (Department Exhibit #2, pg 34).

(14) Claimant stated at hearing he crushed his right ankle, back and right shoulder in a remote, work-related accident while employed at [REDACTED] (Department Exhibit #1, pgs 34 and 60).

(15) A June 2006 right ankle x-ray taken after claimant twisted his ankle stepping off a curb verified an old, suture anchor in claimant's lateral malleous, but no recent ankle injuries were present (Department Exhibit #2, pg 107).

(16) Likewise, claimant's right shoulder x-ray series from 1998 reveals no evidence of fracture, dislocation or shoulder separation, and no updated shoulder or lumbar spine test results exist within the medical records submitted to date (Client Exhibit A, pg 10).

(17) Claimant uses on a cane for balance and stability (Department Exhibit #1, pgs 56 and 57).

(18) Claimant took [REDACTED] for pain management and ended-up in methadone treatment through the [REDACTED] until July 2008, according to a doctor's note dated July 29, 2008, which states in relevant part:

[Claimant] is off [REDACTED]. He is going through withdrawal and has had diarrhea, headaches, and shakiness. He is on Week 3 and he feels better than he did on Week 2. His blood pressure is still out of control (230/120). If we add [REDACTED] I maybe we can do some protection for his headache and get his blood pressure down. I would like to see him with a normal blood pressure before I determine any other possible causes for the headaches. We are happy that he is coming around and getting off the [REDACTED] etc., so we will see him in about two months (Department Exhibit #1, pg 70).

(19) As of claimant's hearing date (11/19/09), he stated he was taking [REDACTED] for pain management and prophylactic [REDACTED] for seizure management.

(20) During a March 10, 2008 medication refill appointment, claimant was encouraged to engage in lifestyle changes, including weight reduction (Client Exhibit A, pg 64)(See also Finding of Fact #3 and #11 above).

(21) Claimant's medical records evidence a second, two-day hospitalization in October 2009 (10/6/09-10/8/09) for acute hypertension and disorientation caused by medication noncompliance (Client Exhibit B, pgs 27-32).

(22) On discharge day, after the doctors stabilized claimant with [REDACTED] and [REDACTED] his blood pressure resumed normality (120/80)(Department Exhibit #1, pgs 27 and 28).

(23) Additionally, claimant's updated brain CT scan and CT angiogram (ordered to clarify his earlier MRI scan which indicated a "possible aneurism") were negative, with no

evidence of bleed, aneurysm, stenosis or any other abnormality (Client Exhibit B, pgs 27 and 58).

(24) Likewise, an updated EEG conducted four months earlier (6/3/09) also was normal, except for excessive beta activity due to medications [REDACTED] (Client Exhibit B, pgs 144 and 145).

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).

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).

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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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.

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).

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).

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).

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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).

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).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been gainfully employed in several years.

At Step 2, claimant's diagnosed physical impairments, in combination, have left him with some range of motion limitations and pain. However, it must be noted no severe mental impairments have been shown, and claimant's physical and emotional symptoms appear fully capable of adequate management as long as medication compliance is maintained.

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. Nevertheless, claimant's medically managed impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis will continue.

At Step 4, claimant's specific job duties (when employed) were somewhat vaguely stated at hearing. However, giving claimant every benefit of doubt, this Administrative Law Judge will deem those activities required at least medium exertional abilities, which may have been beyond claimant's current ability. As such, the analysis will continue.

At Step 5, the very last step in the required analysis, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented

impairments. Claimant is a young individual with a high school education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence presented, that claimant retains the residual functional capacity to perform at least sedentary work, as that term is defined above.

Claimant's biggest barrier to employability appears to be his lack of any recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED]) for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions because he can return to other sedentary work, as directed by Medical-Vocational Grid Rule 201.27.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's August 26, 2008 MA/SDA application because he is not disabled under MA/SDA rules.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: February 4, 2010

Date Mailed: February 4, 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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