

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: 2009-5095
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 10, 2009
Huron 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 March 10, 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 divorced, 43-year-old father with a Special Education history secondary to childhood Attention Deficit Disorder (ADD) who quit school upon completion of tenth grade.

(2) Claimant stands 5'4" tall and weighs 130 pounds; he is right hand dominant.

(3) Claimant has worked as a roofer on and off since age 18, despite the fact his left hand is missing part of his thumb and middle finger due to a work-related saw accident in 1983.

(4) Claimant was first diagnosed with a seizure disorder in 2002; he continued to work as a roofer until 2007, when reportedly increasing low back pain and the seizure diagnosis caused him to stop (Department Exhibit #1, pg 3).

(5) Claimant has been maintained on anti-seizure medications since diagnosis; he is currently taking [REDACTED] as prescribed.

(6) Claimant had an updated lumbar spine MRI scan done on February 18, 2008; no significant changes were noted from an earlier study done in 2001 (Department Exhibit #1, pg 15 and 25).

(7) Claimant's February, 2008 lumbar spine MRI scan reveals a broad-based disc bulge superimposed on central protrusion at L4-L5, without any significant stenosis and only mild neural foraminal encroachment at that level (Department Exhibit #1, pg 25).

(8) There is also bilateral L5 spondylosis and a slight posterior annular tear at L5-S1, which is not causing any spinal stenosis (Department Exhibit #1, pg 25).

(9) The examining physician indicated claimant's history of low back pain was likely due to musculoskeletal strain and the L4-L5 radiculopathy noted above; [REDACTED] was prescribed for pain management and claimant indicated he uses four to six tablets daily, as needed for pain management (Department Exhibit #1, pg 26).

(10) Claimant walks with a right-sided limp and uses his stepfather's cane for balance/support as was medically recommended (Department Exhibit #1, pgs 14 and 25).

(11) A physical examination done in August, 2008 reveals no mental impairments and claimant's muscle strength was symmetrical at 5/5 (normal) in both his upper and lower extremities (Department Exhibit #1, pg 25).

(12) All other body systems were reported normal, except positive straight leg raising on the right, mildly positive straight leg raising on the left, and decreased pinprick sensation in the posterior aspects of claimant's calves (Department Exhibit #1, pg 25).

(13) In June, 2008, claimant was hospitalized for seizure activity because he stopped taking his anti-seizure medication; this was restarted and claimant was stable at discharge (Department Exhibit #1, pg 24).

(14) Claimant stated [REDACTED] was helpful for his back pain, as was [REDACTED] (Department Exhibit #1, pg 24).

(15) As of the hearing date, [REDACTED] had been added to claimant's medication schedule (See Finding of Fact #6-#9 above); no other medications are noted.

(16) Claimant is not engaged in any mental health treatment or counseling; additionally, he alleges no severe mental/emotional/cognitive impairments and none are evidenced by the records submitted to date (Department Exhibit #1, pgs 1-27).

(17) Claimant has not been involved in any substance abuse counseling except court ordered AA meetings following an alcohol-related conviction (DUI), which resulted in license revocation.

(18) Claimant lives alone in a mobile home and he is independent in self cares and basic activities of daily living except driving, for which he relies on family and friends (Department Exhibit #1, pgs 7-10).

(19) Claimant's seizures have been designated as complex partial seizures and claimant says they primarily occur when he is asleep; afterwards, claimant feels fatigued and disoriented for several days, per self report (Department Exhibit #1, pg 10).

(20) When the department denied claimant's August 5, 2008 MA/SDA application based on his failure to meet the criteria necessary for a disability allowance, he filed a hearing request dated November 5, 2008.

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests,

electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

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

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).

Claimant does not qualify for the MA/SDA coverage he seeks because he has not established the existence of a medical condition severe enough to prevent substantial gainful employment for a continuous period of at least 12 months for MA or even 90 days for SDA. Claimant's basis for alleging disability is his intermittent seizure activity and low back pain.

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. None of the objective medical tests submitted provide a reason for claimant's reportedly constant, debilitating, unremediated pain complaints. Claimant's diagnosed lumbar impairment appears fully capable of adequate symptom relief as long as medication compliance is maintained.

Claimant is physically independent in all activities of daily living and no mental impairments have been shown. Additionally, claimant's records verify a history of non-compliance with the prescription medications used to reduce the frequency of seizure activity. In short, while this impairment may prevent claimant from working around dangerous machinery or unprotected heights, it would not prevent him from engaging in any number of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is *AFFIRMED*.

/s/

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

Date Signed:  _____

Date Mailed:  _____

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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