

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: 2009-6252

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 4, 2009

Lapeer 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 February 4, 2009. Claimant 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 married, 46-year-old heavy smoker (10 packs per week) whose cognitive Full Scale IQ tested at 72 as a teenager (Client Exhibit B, pgs 1-7).

(2) In June 2008, claimant's adult IQ testing revealed a Full Scale IQ of 76 with his Performance IQ at 84 and his Verbal IQ at 72 (Department Exhibit #1, pg 8).

(3) Claimant had been working part-time only for approximately one year as a chore services provider as of his February 4, 2009 disability hearing date.

(4) Claimant's previous employment is consistent with borderline intellectual functioning in simple, unskilled work, but claimant has not been substantially gainfully employed since he was laid-off from a full time car wash job in 2000 when the owners of that business were trying to sell it.

(5) Claimant has a valid driver's license and access to a roadworthy vehicle.

(6) Claimant has never been involved in any mental health treatment or counseling and no severe mental or emotional impairments were evidenced by the medical records submitted to date; however, claimant's treating doctor is prescribing [REDACTED] for his "nerves," per self report (See also Department Exhibit #1, pgs 3-11—Independent Evaluation).

(7) The only medication claimant was taking consistently (as prescribed) as of his hearing date was [REDACTED], per self report.

(8) Claimant stands approximately 5'11" tall, weighs approximately 215 pounds and is right hand dominant.

(9) In September 2007, claimant spent two days in the hospital after being beat-up by his brother (9/8/07-9/10/07).

(10) On December 12, 2007, an MA/retro-MA application was filed on claimant's behalf by third party liability specialists [REDACTED].

(11) If that application had been approved, the hospital and medical expenses associated with claimant's assault would have been covered by MA/retro-MA.

(12) When that application was denied, [REDACTED] filed a hearing request dated November 7, 2008.

(13) Claimant reports he is disabled due to continued, excruciating neck/lower back/right knee pain post-hospitalization, combined with his low IQ scores (See also Finding of Fact #9 above).

(14) Claimant's September 2007 hospital records indicate CT scans of his head, neck, chest, abdomen and pelvis were negative for any acute injuries other than multiple facial fractures that did not require surgical repair (Department Exhibit #1, pgs 23-39; Department Exhibit #3, pg 8).

(15) The treating doctor noted there were no acute reasons for continued hospitalization and claimant was discharged on September 10, 2007 (Department Exhibit #1, pg 23).

(16) While hospitalized claimant was started on the alcohol withdrawal protocol, and at discharge he was instructed to refrain from alcohol, illicit drug use and smoking (Department Exhibit #1, pg 23)(See also Finding of Fact #1 above).

(17) Claimant's follow-up cervical spine and right knee x-rays dated August 25, 2008 were completely normal, but EMG nerve conduction studies done in October 2008 verify mild bilateral carpal tunnel syndrome and peripheral sensory neuropathy with no evidence of cervical radiculopathy (Client Exhibit A, pgs 3, 4, 10 and 11).

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.

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.

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).

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/retro-MA at Step 1, because he has not been gainfully employed in several years.

At Step 2, claimant's residual post-assault physical impairments appear minimal at best. Furthermore, no severe mental impairments have been shown. However, the governing case law provides for a *de minimus* standard of review at this level. Consequently, ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity and duration have been met. As such, the analysis must continue.

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

At Step 4, nothing on this record supports a finding claimant is physically or mentally incapable of performing full time those chore services he was part-time performing as of the hearing date, if such position was offered. Therefore, this analysis could end at Step 4 with a finding of not disabled, based on claimant's ability to return to past work. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with a minimal education (sixth grade only) and a borderline IQ. Furthermore, his past relevant work history consists only of unskilled general labor. Nevertheless, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least simple, unskilled light work, as that term is defined above.

Claimant's biggest barrier to employability appears to be his complete lack of connection to the competitive work force over the past ten years. Claimant should be referred to [REDACTED] [REDACTED]) for assistance with job training and/or placement consistent with his current skills, interests and abilities. Claimant is not disabled under the applicable MA rules, because he can return to any number of unskilled light work jobs currently existing in the national economy, as directed by Medical-Vocational Rule 202.17.

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 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: January 13, 2010

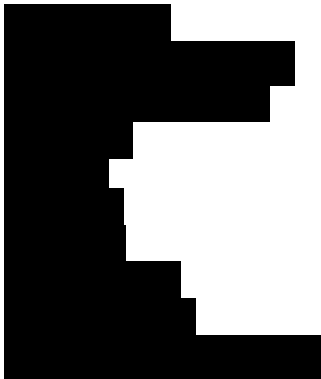
Date Mailed: January 14, 2010

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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