

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: 2009-7535

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 9, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 April 9, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 March 28, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability. Claimant was previously receiving MA-P

until the end of February, 2008, when his case was closed due to failure to return review materials.

(2) On September 5, 2008, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On September 10, 2008, the department caseworker sent claimant notice that his application was denied.

(4) On November 7, 2008, claimant filed a request for a hearing to contest the department's negative action.

(5) On January 12, 2009, the State Hearing Review Team again denied claimant's application stating that he is capable of performing sedentary and light work per Vocational Rule 202.20 and 201.27.

(6) Claimant is a 37 year old man whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 135 pounds. Claimant has a high school diploma and 3 years of college in business administration classes. Claimant can read, write and do basic math.

(7) Claimant last worked on July 31, 2005 as a server in a hotel for 2 months, where he was transferred from another hotel where he worked for 3 years. Claimant also worked for other hotels as a server for 8 years, and for the [REDACTED] as a mail clerk from 1991 to 1995 as temporary help. Claimant states he was unable to work after suffering a stroke in July, 2005, and then another stroke in 2007.

(8) Claimant alleges as disabling impairments two strokes in 2005 and 2007 which left him with limited use of right side of his body and affected his right eye, fibromyalgia, and HIV positive status.

(9) Claimant lives alone in a Section 8 subsidized house where rent is [REDACTED] per month currently paid by his mother. Claimant is assisted with daily needs, grocery shopping and house cleaning by his mother, nephew or someone from the church.

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

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 does 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).

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).

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).

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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since year 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for a duration of at least 12 months.

The objective medical evidence on the record consists of a Medical Examination Report for an examination performed on February 20, 2008 by a physician that had first examined the claimant in November, 2006. (Department's Exhibit I, pages 15 and 16). Report states that claimant has severe pain and weakness on right side and pain in right eye from head to toe. Current diagnosis is fibromyalgia and severe weakness, high cholesterol and risk of future strokes if diet and medication is not maintained. Claimant was 5'7" tall and weighed 140 pounds, and his blood pressure was 110/70. Claimant's right hand is dominant. General description is that of pain increasing in damp and humid weather, severe fatigue and diagnosis of depression. Claimant also stood severe risk of infections returning to right eye without continued medication. Claimant's respiratory, cardio-vascular and abdominal exam areas were normal. Claimant had atrophy and painful weakness on right side of his body, and his reflexes, motor skills and coordination was diminished from strokes. Claimant's condition was deteriorating, he was limited to lifting/carrying less than 10 lbs. and never any more than that, to standing and or walking less than 2 hours and sitting less than 6 hours (the least time limits on the form). Claimant could use both of his hands/arms for simple grasping, could only use his left hand/arm for reaching, and could use neither for pushing/pulling and fine manipulating. Claimant could only operate foot/leg controls with his left foot/leg. Doctor stated that the claimant has severe case of fibromyalgia on entire right side and limited ability since he is right handed, he is really limited as the options for things to do and ways he can work, and he can not work at all. Also, his illness from his extremely high cholesterol and immunal condition makes prognosis unlikely to improve.

Claimant also had mental limitations in areas of memory, sustained concentration, reading/writing and social interaction. Claimant was on variety of medications for pain, high cholesterol, depression, sleep issues, etc. Claimant needed assistance in showering.

An independent neurological exam was performed at the direction of Medical Review Team on June 18, 2008. (Department's Exhibit I, pages 3 and 4). Claimant was 5'8" tall and weighed 146 lbs., and his blood pressure was 110/80. Claimant's right arm had motor weakness, the upper limb muscles are weak on the right side, the right lower limb muscles also have weakness, right shoulder movements are difficult, wrist joint movements are difficult on the right side but normal on the left side. Claimant can only make a grip with the left hand, and has a limping gait because of weakness. Conclusion was that the claimant has had two strokes and he has weakness in the right arm and right leg with walking difficulty and balance problems.

Claimant's hearing testimony is that he is in daily pain caused by his fibromyalgia, he must take [REDACTED] 4-5 times per day in order to be able to sleep, he feels that his condition has worsened as he can't afford physical therapy, and that he spends his days home in bed watching TV and is up just to eat. Claimant also testified that he walks with the help of a used walker given to him by a doctor. Department's representative at the hearing also stated that the claimant appears to have a problem walking and is using a walker.

This Administrative Law Judge finds that the medical record consisting of a report by claimant's own doctor that saw him since year 2006 and independent neurological exam performed in July, 2008 is sufficient to establish that claimant has a severely restrictive physical impairment. This impairment has lasted since the claimant had his strokes in 2005 and 2007.

For these reasons, this Administrative Law Judge finds that claimant has met his burden of proof at Step 2. Analysis therefore continues.

At Step 3 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 supports a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment, that of 11.04B. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). As the claimant's impairment has lasted 12 months or more, no further analysis is needed.

In conclusion, the claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. Claimant's physical impairments meet or equal a listed impairment in the federal regulations. The claimant is therefore disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record establishes that claimant is unable to work for a period exceeding 90 days, the claimant meets the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA-P and SDA application.

Accordingly, the department's decision is REVERSED. Department shall:

- (1) Process claimant's disputed March 28, 2008 MA-P and SDA application.
- (2) Issue the claimant any and all MA and SDA benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements) that he did not receive, based on March 28, 2008 application.
- (3) Notify the claimant in writing of this determination.
- (4) Claimant's MA and SDA benefits are to reviewed for continued eligibility based on disability in April, 2010.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 28, 2009

Date Mailed: April 30, 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.

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