

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: 2010-14090
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 16, 2010
Kent 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 February 16, 2010. Claimant personally appeared and testified. He was assisted by

[REDACTED]

ISSUE

Did the department properly deny claimant's January 27, 2009 Medicaid (MA) and State Disability Assistance (SDA) application?

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, 45-year-old male who resides with his ex-wife in [REDACTED]

[REDACTED]

(2) Claimant has a valid driver's license and a general equivalency diploma (GED) (Department Exhibit #1, pg 53).

(3) Claimant's past relevant employment history is in unskilled factory labor and cooking jobs; he was last employed as a line worker at a local [REDACTED] factory but he left that job in January 2009, per self report at hearing.

(4) On January 27, 2009, claimant filed a disability-based MA/SDA application.

(5) On March 13, 2009, the department mailed a denial notice to claimant at his ex-wife's address-of-record which denies that application based on the lack of a legally disabling condition (Department Exhibit #1, pg 2).

(6) Eight months later, specifically, on November 17, 2009, the department received claimant's hearing request combined with a written Notice of Appearance by claimant's attorney-of-record herein.

(7) On February 16, 2010, claimant and his attorney participated in a telephone conference hearing.

(8) Claimant is right hand dominant; additionally, he stands 5'10" tall and is morbidly obese at 323 pounds (BMI=46.3), consequently he has developed diabetes and now uses insulin ([REDACTED]) and oral medication ([REDACTED]) for blood sugar control; weight loss has been repeatedly recommended.

(9) Claimant's medical records verify two other conditions commonly associated with medical obesity, high blood pressure (HBP) and high cholesterol (HCL), both capable of adequate control as long as medication compliance is maintained.

(10) Claimant stated at hearing he was taking [REDACTED] (HBP) and [REDACTED] (HCL) as prescribed by his treating physician for control of these two conditions.

(11) Claimant stated he previously participated in outpatient mental health treatment at [REDACTED] but that ended in December 2009, although claimant's treating doctor has maintained him on [REDACTED] and [REDACTED] for self reported depression and anxiety.

(12) Claimant alleges "emotional issues" and chronic pain throughout multiple body areas causes him to be incapable of maintaining substantial gainful work activity.

(13) Lower lumbar x-rays taken on January 7, 2008, while claimant was being treated in the Emergency Room (ER) for pain secondary to a home fall one day earlier, revealed no acute injuries but some mild, sclerotic changes involving claimant's lower lumbar facet joints was seen (Department Exhibit #1, pgs 129-133).

(14) An updated medical report (4/11/08) from claimant's treating provider ([REDACTED]) states in relevant part:

...He is very focused on obtaining his [REDACTED] and [REDACTED]. As I left the room he did ask me again if I was going to come back and give him the scripts for [REDACTED]...

...He reports he is not a smoker. He states he did not do the blood work as recommended. He states he did not go for the EMG of his lower extremities that was scheduled. He states he has not rescheduled. He reports he would like some [REDACTED]. He states he cannot take [REDACTED] because it upsets his stomach. He reports he has not been checking his sugars. He reports no sputum production, no fever or chills, nausea, vomiting or diarrhea...

...We will start him on [REDACTED] [REDACTED]. He can continue with the [REDACTED] as well [REDACTED]. Call or return with any questions, concerns, or if any health maintenance issues arise, or if condition worsens. We will also give him [REDACTED]...His request for narcotic medications at this time, given his noncompliance, is denied (Department Exhibit #1, pg 106).

(15) Likewise, claimant's October 2008 doctor's treatment record states in relevant part:

...He reports chronic back pain. It comes and goes. He states when it happens it can happen at any time when he bends or twists causing muscle spasm and pain. He uses [REDACTED]. He absolutely does not want a work up for his back at present. No MRI, physical therapy or referral to a specialist. He states the [REDACTED] work well and he uses them only intermittently. He has not been taking his [REDACTED] as recommended; he has been taking [REDACTED]. He has been taking it over the last week but states has not been checking his sugars. He does take his [REDACTED] as well. He reports he takes [REDACTED] off and on, but has been out for a while. He reports sore throat. He states some nasal discharge as well. He reports a cough secondary to above. He reports no abdominal pain or discomfort, weakness upper or lower extremities. No numbness or tingling. He reports no blurry vision...(Department Exhibit #1, pg 68).

(16) Claimant was hospitalized through a local Emergency Room (ER) on February 1, 2009 and discharged on February 6, 2009 in stable condition with no physical limitations after having suffered a spontaneous, right-sided pneumothorax which fully resolved with treatment (Department Exhibit #1, pgs 48 and 49).

(17) Claimant's ER intake information indicates he was still smoking cigarettes at that time, but claimant stated at hearing he quit smoking during that hospitalization and has remained tobacco-free since then; occasional [REDACTED] use also were noted on claimant's February 2009 ER report, but not discussed at hearing (Department Exhibit #1, pgs 23 and 26).

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).

The threshold issue in this case is whether claimant's hearing request was timely filed. This Administrative Law Judge concludes said request was untimely filed based on the applicable federal regulation and departmental policy sections which clearly state:

The department must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221.

The AHR, or if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. PAM, Item 600, p. 4.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

The material facts of record are not in dispute. The department sent a denial notice to claimant on March 13, 2009, but did not receive his hearing request until November 17, 2009, well in excess of the governing rules (90 days)(See also Finding of Fact #5 and #6 above). Consequently, under the above-referenced federal regulation and state policies, no jurisdiction exists for this Administrative Law Judge to proceed on the merits of this case. The status quo must remain intact. The department's application denial action must remain upheld for lack of subject matter jurisdiction. However, in closing, this Administrative Law Judge notes claimant would not have prevailed on the merits, even if a full analysis was required.

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These federal guidelines are applicable in SDA cases:

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.

"Disability" is:

...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.

...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).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can

still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...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 federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with the applicant's reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in part:

...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).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...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).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

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).

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).

...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) [SDA duration = 90 days].

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 cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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).

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).

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).

Applying the sequential analysis herein, claimant would remain eligible at the first step since he has not worked anywhere in more than a year. 20 CFR 416.920(b).

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, the evidence of record establishes severity has been met.

The third step of the analysis looks at whether an individual meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not.

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. This step examines the physical and mental demands of the work done by the applicant in the past. 20 CFR 416.920(e).

In this case, the record supports claimant's contention he could not return to medium exertional factory work or cooking on a sustained basis; therefore, an analysis of Step 5 would be required, if the merits could be addressed. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity of the applicant to do other work. 20 CFR 416.920(f). Upon careful review of the medical evidence submitted, this Administrative Law Judge finds Medical-Vocational Rules 201.18 and/or 202.20 would direct a finding of not disabled. Put simply, the medical documentation in this file is insufficient to indicate claimant's conditions, standing alone or combined, would interfere with his ability to engage in other work, specifically, sedentary or light unskilled work, as those terms are defined above. When taken as a whole, the evidence fails to meet the regulatory requirements necessary to qualify for disability-based MA or SDA. Consequently, claimant's disputed application must remain denied at the threshold level based on lack of jurisdiction, or *in arguendo*, because he

retains the residual functional capacity to perform sedentary or light work pursuant to Medical-Vocational Rules 201.18 and/or 202.20.

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.

Accordingly, the department's denial of claimant's January 27, 2009 MA/SDA application is AFFIRMED.

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

Date Signed: March 16, 2010

Date Mailed: March 17, 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.

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