

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: 2010-15609
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 23, 2010
Tuscola 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 23, 2010. 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) On February 8, 2010, the Supervisory Administrative Law Judge at the State Office of Administrative Hearings and Rules (SOAHR) issued an Order for a formal hearing on claimant's disputed disability issues.

(2) This hearing was held on February 23, 2010.

(3) Claimant stipulated on the record at hearing he does not have a dispute with any actions the department took relative to his SDA eligibility (or lack thereof) before September 1, 2009.

(4) On September 17, 2009, claimant applied for disability-based MA/SDA because his Caretaker-Relative MA case closed and he no longer had the financial means necessary to fund his ongoing medical expenses.

(5) On January 26, 2010, the department's State Hearing Review Team (SHRT) denied disability-based MA/SDA for the only period still in dispute (9/09 forward) based on their finding claimant retains the ability to perform light work on a sustained basis, despite his diagnosed impairments (Department Exhibit #2).

(6) At hearing, claimant alleged he meets the disability standards necessary to be eligible for MA/SDA based on diagnosed high blood pressure, anxiety and depression, along with self-reported back/hip pain and ongoing "total body tremors."

(7) Claimant is a single, 48-year-old smoker with a high school equivalency education (GED) who stands approximately 5'10" tall and weighs approximately 143 pounds, a 20 pound decrease over the past year, per self report (See also Department Exhibit #1, pgs 28 and 36).

(8) Claimant has an unskilled work history primarily in nursing facilities as a direct care aide but he has not been gainfully employed in that or any other capacity since May 2002, according to the form he completed at application (Department Exhibit #1, pg 28).

(9) Claimant's remote medical treatment history includes gastric ulcerations requiring surgery in 1999, per self report; however, no medical verification of this diagnosis or treatment history has been submitted to date.

(10) Recent treatment notes from claimant's primary care physician (5/27/09) indicate daily [REDACTED] was being prescribed, a typical drug used in patients diagnosed with chronic [REDACTED] (Department Exhibit #1, pgs 35 and 38).

(11) Additionally, Emergency Department (ED) records indicate claimant was treated briefly in [REDACTED] on May 28, 2009, in an altered mental state secondary to intentional, excess [REDACTED] ingestion; all claimant's other body systems were noted to be normal (Department Exhibit #1, pgs 77-79).

(12) On March 10, 2009, claimant underwent an outpatient discectomy/fusion at L5-S1; he was discharged in stable condition and no evidence of complications from that procedure has been submitted to date (Department Exhibit #1, pg 52).

(13) Claimant's primary care physician is prescribing [REDACTED] and [REDACTED] for reportedly chronic and debilitating pain symptoms, in addition to [REDACTED] for high blood pressure management.

(14) Claimant's primary care treatment notes verify adequate blood pressure control as long as medication compliance is maintained (Department Exhibit #1, pgs 35-37).

(15) Claimant stated at his disability hearing on February 23, 2010, he started attending outpatient [REDACTED] counseling twice monthly at the first of this year (1/10), and also, his primary care physician has prescribed [REDACTED] t and [REDACTED] for claimant's depressed mood and anxiety symptoms.

(16) Claimant submitted no [REDACTED] records at any time during the pendency of this appeal, but he brought a note from his primary care physician to the hearing which states claimant suffers from depression/anxiety/tremors and includes the doctor's opinion that claimant is "disabled and unable to work"(Client Exhibit A, pg 1).

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).

...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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged..

...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 impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909 [SDA duration = 90 days].

...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).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to

decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

...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).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 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 employed in several years. At Step 2, claimant's lower lumbar diagnosis and residual symptoms since surgery (some range of motion limitations and pain) meet the *de minimus* level of severity and duration required for further analysis. However, no severe mental impairments have been shown, and claimant's current prescription medications have been shown capable of adequate symptom management for all his diagnosed conditions, given the objective medical evidence presented.

Furthermore, 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, giving claimant's impairments every benefit of doubt, this Administrative Law Judge will continue the above-referenced sequential evaluation process.

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 must continue.

At Step 4, the record supports claimant's contention he is incapable of the heavy patient lifting and excessive walking, standing, bending, etc. associated with patient caregiving due to his lower lumbar residuals secondary to his May 2009 discectomy. As such, this analysis will continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of all documented impairments. Claimant is a younger individual with a high school equivalency education and a medium/heavy, unskilled work history. Consequently, at Step 5 this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform unskilled light work, as that term is defined above, even with his diagnosed impairments. This finding is consistent with the department's SHRT decisions dated January 26, 2010 and February 26, 2010. Claimant is not disabled under the MA/SDA definitions, because he can return to other light work, as directed by Medical-Vocational Rule 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 by MA/SDA eligibility standards.

Accordingly, the department's disputed application denial action is AFFIRMED.

/s/

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

Date Signed: March 23, 2010

Date Mailed: March 24, 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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