

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: 2010-26388

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 13, 2010

Gratiot 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 April 13, 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) Claimant is a 52-year-old high school graduate certified in auto mechanics; additionally, he possesses a valid CDL-A license but he reports he hasn't been employed in truck driving for 20 years.

(2) Claimant is divorced and lives alone in [REDACTED]; additionally, claimant has a valid driver's license/roadworthy vehicle.

(3) Claimant requires no physical assistance with self cares or basic daily living activities but sometimes his daughter helps him with his routine domestic chores (Department Exhibit #1, pgs 22 and 23).

(4) Claimant has past relevant work experience in retail auto parts delivery/sales/service in addition to working as an oil change technician, but claimant left his most recent technician's job in January 2009 and he has remained unemployed since then (Department Exhibit #1, pg 20).

(5) On December 18, 2009, claimant applied for disability-based MA/SDA.

(6) When the department denied claimant's application he filed a hearing request; the hearing was held by conference telephone on April 13, 2010.

(7) Claimant stands 5'6" tall and weighs 195 pounds; he is left hand dominant.

(8) In November 2009, claimant underwent bilateral upper extremity EMG testing which revealed mild to moderately severe right (worse) and left carpal tunnel syndrome (Department Exhibit #2, pg 2).

(9) Additionally, claimant's November 2009 left wrist x-rays revealed left scapholunate advanced collapse osteoarthritis (SLAC osteoarthritis)(Department Exhibit #2, pgs 1 and 2).

(10) On January 19, 2010, claimant underwent corrective outpatient right carpal tunnel decompression, right trigger finger release and excision of a benign cyst on his right long finger (Department Exhibit #1, pgs 2 and 28).

(11) A follow-up medical note dated February 1, 2010 indicates claimant's numbness/tingling symptoms had improved and he was doing well, except for some lingering soreness in the right long finger (Department Exhibit #1, pg 2).

(12) At that time, claimant's hand surgeon indicated claimant also would need future left carpal tunnel decompression.

(13) Claimant presented a note from his hand surgeon which confirms another outpatient procedure is scheduled for May 11, 2010, to include left carpal tunnel release and left long trigger finger release identical to that performed on claimant's right hand four months earlier (Client Exhibit A)(See also Finding of Fact #10 above).

(14) Claimant's projected medical restrictions will be to limit his work lifting to light duty for approximately one month after the upcoming procedure (Client Exhibit A).

((15) Claimant stated at the hearing he takes [REDACTED] three or four times daily for pain management; additionally, he has been diagnosed with high blood pressure and high cholesterol both adequately controlled with current prescription medications ([REDACTED]).

(16) In August 2009, claimant initiated a cardiac consultation secondary to palpitations experienced for approximately two months prior to this visit as "skipped heart beats" (Department Exhibit #1, pgs 127 and 128).

(17) A battery of cardiac testing (EKG, Thallium Stress, Holter Monitoring, Treadmill Stress, Doppler) revealed no severe abnormalities; however, claimant was noted to be a one and a half pack per day smoker for the past 30 years and smoking cessation was strongly recommended (Department Exhibit #1, pgs 125-135).

(18) Claimant is not involved in any mental health treatment or counseling and no severe mental, emotional or cognitive deficits are evidenced by the medical records submitted to

date; however, claimant stated at the hearing his family doctor has prescribed [REDACTED] in response to claimant's self-reported depressive symptoms.

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).

...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).

...[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.

...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).

...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).

...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).

[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).

Claimant does not qualify for the MA/SDA disability coverage he seeks because he has not established the existence of a medically severe condition, or combination of conditions, which could reasonably be expected to prevent employability for the continuous durational periods required under the governing regulations. The evidence of record in this case establishes claimant is a fully functioning individual of at least average intelligence who is physically and mentally capable of being employed in a wide variety of unskilled jobs currently existing in the

national economy, which is the standard to be applied in disability determination cases. In fact, a November 16, 2009 progress report from claimant's hand surgeon before either corrective carpal tunnel release surgery was done indicates claimant was managing to do some auto mechanics work although it was difficult, given his left wrist symptoms (Department Exhibit #2, pg 1).

Additionally, 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. Claimant's current prescription medication schedule appears fully capable of adequately controlling all his existing ailments given the medical records submitted. As such, claimant's disputed MA/SDA application must remain denied for lack of duration/severity shown, as stated on the department's post-hearing State Hearing Review Team (SHRT) decision dated April 16, 2010.

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: April 20, 2010

Date Mailed: April 20, 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 mailing 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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