

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: 2010-30743
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2010
Otsego 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 May 13, 2010. Claimant personally appeared and testified.

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 divorced, 59-year-old light smoker who holds BS and Masters Degrees in Business Administration; he lives alone in [REDACTED].

(2) Claimant is fully independent in all self cares and basic daily living activities except driving because he lost his driver's license approximately eight years ago secondary to an alcohol-related offense and he has opted to forego petitioning for reinstatement (Department Exhibit #1, pgs 16-18).

(3) Claimant has a highly skilled work history in the automotive field having been last employed full-time as a sheet metal cost estimator until he took a [REDACTED] buy-out in [REDACTED].

(4) Since July 2009, claimant has worked (and he continues to work) part-time (20 hours weekly) as a retail salesman for [REDACTED] (Department Exhibit #1, pg 14).

(5) Claimant primarily uses the public bus system without mental or physical difficulty to meet his current transportation needs.

(6) On February 18, 2010, claimant applied for disability-based Medicaid (MA).

(7) When the department denied that application claimant requested a hearing, held May 13, 2010.

(8) Claimant stands 6'0" tall and is medically obese at 260 pounds (BMI=35.3); he is right hand dominant, per self report.

(9) Claimant has been diagnosed with noninsulin dependent diabetes, high blood pressure and high cholesterol not uncommon for someone of his age/girth and currently controlled with prescription medications.

(10) Claimant reports right knee pain which has grown progressively worse since August 2009; this is the sole basis on which claimant alleges disability entitlement.

(11) A medical examination report dated January 27, 2010, indicates claimant's weight was 323 pounds at that time; additionally, his right knee CT scan demonstrates bony exostosis

around the medial femoral condyle (Department Exhibit #1, pg 29)(See also Department Exhibit #8 above).

(12) Claimant's symptoms include medial instability, generalized effusion and right knee pain (Department Exhibit #1, pg 31).

(13) Claimant uses a right knee unloader brace and takes prescription strength [REDACTED] and [REDACTED] as needed for pain management (Department Exhibit #1, pgs 31 and 35).

(14) Claimant's January 13, 2010 medical examination report indicates he was advised he will likely need some sort of knee replacement at some point in time (Department Exhibit #1, pg 32).

(15) Claimant has no medical insurance to cover the expenses associated with this type of procedure.

(16) On April 26, 2010, the department's State Hearing Review Team (SHRT) concurred with the local office's denial of claimant's disability-based application, stating in relevant part:

The claimant's past work was sedentary (as performed in the national economy). The claimant retains the capacity to return to past relevant work (Department Exhibit #2).

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.

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).

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 at Step 1, because he is not employed full-time (See Finding of Fact #4 above). However, it must be noted claimant is physically capable of working 20 hours weekly and nothing in his medical records suggest he is so impaired by his right knee problems that he could not continue in that capacity full-time, if the hours were available.

Furthermore, 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. This Administrative Law Judge finds claimant's current prescription medications are fully capable of adequate symptom management, given the objective documentary evidence presented. Nevertheless, claimant's medically managed right knee impairment meets the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairment is severe enough to meet or equal any specifically listed impairment; consequently, the analysis must continue.

At Step 4, the evidence on this record reveals claimant is an intelligent, articulate, well-educated individual with an extensive skilled work history. Additionally, he is fully independent in all activities of daily living. As such, this Administrative Law Judge concurs with

the department's State Hearing Review Team (SHRT) doctors' opinion that claimant is capable of performing any number of sedentary work jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's disputed application must remain denied despite his right knee impairment because he can return to sedentary work, as directed by Medical-Vocational Rule 201.05.

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 application denial action is AFFIRMED.

/s/

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

Date Signed: May 25, 2010

Date Mailed: May 26, 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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cc:

