

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: 2010-32267
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 19, 2010. Claimant personally appeared and testified.

ISSUE

Whether claimant meets the disability criteria 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 December 21, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On February 3, 2010, the Medical Review Team denied claimant's application stating that claimant impairment's do not meet duration.

(3) On February 9, 2010, the department caseworker sent claimant notice that his application was denied.

(4) On February 16, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 30, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was to see [REDACTED] on February 5, 2010, or was to possibly go to [REDACTED]. Additional information would be helpful in evaluating the claim especially current audiograms to show the claimant's current level of hearing loss. Additional Medical Information is suggested to assess the severity of claimant's impairments. Please obtain additional updated Medical records. The claimant had an appointment of February 5, 2010, with [REDACTED] and was possibly going to [REDACTED]. Please contact the claimant to find out who he has seen, and if he has had any recent hearing test or any additional test. Please obtain these updated records. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied.

(6) The hearing was held on May 19, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on May 26, 2010.

(8) On May 28, 2010, the State Hearing Review Team approved claimant for Medical Assistance and retroactive Medical Assistance benefits stating in its' analysis and recommendation: The claimant has chronic ear problems. He has developed a skinlined cyst that puts him at risk for meningitis, complete hearing loss, and loss of balance function. The claimant will be allowed MA-P benefits to have the needed surgery. The claimant's impairments

do not meet/equal the intent or severity of an appropriate Social Security listing. The medical evidence of record indicates that claimant does not retain the capacity to perform any work on a sustaining basis due to hearing loss, balance problems, and ongoing infections. Therefore, MA-P is approved using Vocational Rule 201.00(H) as a guide. Retroactive MA-P was considered in this case and was approved effective September 2009. SDA is approved in accordance with PEM 261. In the medical review is September 2010, please obtain updated medical records from April 2010 to current including operative reports, audiograms, and treatment notes.

(9) Claimant is a 22-year-old man whose birth date is [REDACTED] Claimant is 6'1" tall and weighs 180 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked December 2009, detailing semi-trucks, and cutting grass.

(11) Claimant alleges as disabling impairments: ear infection, cholesteatoma in the right eye and adhesiveotitis, as well as a learning disability and a reading comprehension problems.

CONCLUSIONS OF LAW

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 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).

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).

Because of the SHRT determination, it is not necessary for the Administrative Law Judge to discuss the issue of disability, per Program Administrative Manual, Item 600. The department is required to initiate a determination of claimant's financial eligibility for the requested benefits, if not previously done.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the definition of medically disabled under the Medical Assistance Program and the State Disability Assistance Program as of the December 21, 2009 application date.

Accordingly, the department is ORDERED to initiate a review of the December 21, 2009 Medical Assistance application if it has not already done so to determine if all other non-medical criteria are met. The department shall also initiate a review of the retroactive Medical Assistance application to determine if all other non-medical eligibility criteria are met, and if claimant is otherwise eligible shall open an ongoing Medical Assistance case for claimant from September 2009 forward. The department shall inform the claimant of the determination in writing.

The department is ORDERED to conduct a medical review of claimant's medical case in December 2010, to allow claimant time to have surgery on his ear. At medical review, the department is ORDERED to assist claimant in obtaining medical records from April 2010 to current, including operative reports, audiograms, and treatment notes. Claimant should have a

complete physical from a MD or a DO or internist, and shall provide narrative reports for all operative reports, audiograms, and treatment notes. .

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 04, 2010

Date Mailed: June 7, 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.

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