

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 201052098
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: November 18, 2010
Midland County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, an in-person hearing was held on November 18, 2010.

ISSUE

Whether claimant has established disability for Medical Assistance (MA) 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 a material fact:

1. June 17, 2010, claimant applied for MA, retroactive MA, and SDA.
2. August 5, 2010, the Medical Review Team (MRT) denied claimant's application.
3. August 10, 2010, the department sent claimant written notice that his application was denied.
4. August 30, 2010, the department received claimant's timely request for hearing.
5. September 13, 2010, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

6. November 18, 2010, in in-person hearing was held.
7. Claimant asserts disability based on impairments caused by blood clots in his left leg.
8. Claimant testified at hearing. Claimant is 48 years old, 5'7" tall, and weighs 420 pounds. Claimant completed high school, a GED, and truck driving school. He is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive short distances. He is able to care for his needs at home.
9. Claimant's past relevant employment has been as a truck driver.
10. July 10, 2009, claimant underwent x-rays of the left knee. The prepared report revealed moderate hypertrophic degenerative osteoarthritis findings, all three compartments, left knee, more noticeable patellofemoral and knee joint inner space laterally and to a lesser degree medially. Department Exhibit A, pg 4. August 13, 2009, claimant underwent x-rays of the left hip. The prepared report indicates the following findings: history of an injury; no fractures or dislocation; mild hypertrophic spurring laterally. Department Exhibit A, pg 5.
11. July 10, 2009, claimant complained of pain and effusion of the left knee. Physical exam revealed knee sprain, history of DVT, rule out DVT. Venous duplex study conducted that same date revealed a normal color duplex ultrasound of the left lower extremity. Department Exhibit A, pgs 6, 26. July 20, 2009, Claimant visited his physician complaining of pain to the left leg and back pain. Department Exhibit A, pg 29. September 24, 2009 treatment records indicate claimant has left leg DVT and edema. Department Exhibit A, pg 35.
12. On or about June 9, 2010, claimant was admitted to hospital with scrotal swelling. Claimant was treated in hospital until July 8, 2010. Final diagnosis was scrotal cellulitis. Department Exhibit A, pgs 58-309. July 22, 2010, claimant was examined by a certified nurse practitioner who also completed a Medical Examination Report (DHS-49) that same date. The report indicates claimant has osteoarthritis of the left hip and knee spurring, sleep apnea, morbid obesity, deconditioning, history of DVT and pulmonary embolism. Physical exam revealed a normal physical exam with the exception of left leg edema; pain in left knee and left hip. Nurse practitioner indicated claimant's condition is stable. Nurse practitioner opined claimant is able to frequently lift 25 pounds and occasionally lift 50 pounds. He is able to stand and/or walk about six hours in an

eight-hour workday. He is able to perform a full range of repetitive actions with both upper extremities. He is not able to operate foot/leg controls with either lower extremity. Claimant has no mental limitations. Department Exhibit A, pgs 54-55, 57.

13. Mental assessment that took place during June and July 2010 hospitalization indicates that claimant was oriented x 3 with intact long-term and short-term memory. Claimant expressed feelings of depression due to his illness and unemployment status. Department Exhibit A, pgs 63-71.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has a history of DVT and pulmonary embolism. At hearing, claimant credibly testified and demonstrated that his left leg was swollen and painful. However, the objective medical evidence of record does not establish that claimant currently has DVT or pulmonary embolism nor has he had since prior to July 2009. Claimant continues on medication treatment. objective medical evidence must be corroborated by sworn testimony. Claimant's sworn testimony indicates much greater impairment than does the objective medical evidence. Accordingly, objective medical evidence of record must be given the greater legal weight. The objective medical evidence of record also indicates that claimant has cellulitis of the scrotum and was treated in hospital for one month during June and July 2010. Claimant recovered after treatment and is currently able to engage in activities comparable to medium work activities. Finding of Fact 10-13.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent all work for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not meet or equal any Social Security Listing.

At Step 4, claimant's past relevant employment has been as a truck driver. See discussion at Step 2 above. Finding of Fact 9-13. It appears that with claimant's history of DVT and pulmonary embolism, it would be difficult for him to engage in his past relevant employment as a truck driver.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has impairments that prevent him from performing the duties required

by his past relevant employment for a period of 12 months or more. Accordingly, claimant is not disqualified from receiving disability at Step 4.

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).

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Steps 2 and 4 above. Finding of Fact 9-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing medium work activities. Considering claimant's vocational profile (younger individual, high school graduate, and history of semi-skilled work, skills not transferrable) and relying on Vocational Rule 203.29, claimant is not disabled. Accordingly, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not meet the disability requirements to qualify for Medical Assistance based on disability. The department properly denied claimant's application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
- (d) A person receiving 30-day post-residential substance abuse treatment.
- (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).

- (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in

201052098/jab

JAB/ db

cc:

