

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

IN THE MATTER OF:

[REDACTED]

Reg No. 201056025  
Issue No. 2009/4031  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: November 30, 2010  
Muskegon 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on November 30, 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 a material fact:

1. To date, claimant has filed multiple disability applications dating back to 2005; all these applications were denied.
2. Claimant's most recent application, filed on June 4, 2010, was also denied; consequently, he filed a hearing request dated September 12, 2010.
3. Claimant's hearing was held by conference telephone on November 30, 2010.
4. Claimant is a divorced, 53-year-old military veteran who completed 10th grade; he currently resides with his long term partner in

█ additionally, he has a valid driver's license and two roadworthy vehicles.

5. Claimant is completely independent in all self cares and basic daily living activities.
6. Claimant's past relevant work is unskilled janitorial work, but he left his most recent job in 2006 when he got laid-off; he has remained unemployed since then.
7. Claimant stipulated on the record he looks for work daily.
8. Claimant also stipulated he could hold down a landscaping job, or even return to light janitorial work as long as his lower back doesn't "lock-up," but no one is hiring now.
9. The veterans facilities in █ Creek and █ provide general medical care to claimant; he attends routine office visits approximately every six months.
10. Currently, claimant's doctors have prescribed █, as needed, for low back pain management.
11. The only other medications claimant receives by mail from the █ (A) are high blood pressure and high cholesterol regulators, which continue to provide adequate control, per all the medical progress reports contained within claimant's file.
12. Claimant's medical history evidences he experienced a pulmonary embolism in 2000, he underwent ASCAD stenting x 2 in 2009, and he has intermittent, symptomatic gallstone flare-ups (Department Exhibit #1, pg 931).
13. Claimant's medical records also document a remote myocardial infarction (heart attack); however, his ejection fraction (EF) was preserved at 45% (normal), per a March 24, 2010 medical progress report (Department Exhibit #1, pg 930).
14. Claimant stands approximately 5'10" tall and is medically obese at approximately 222 pounds (BMI=31.9)(Department Exhibit #1, pgs 929 and 953).
15. Weight loss and smoking cessation have been repeatedly recommended by claimant's █ doctors (Department Exhibit #1, pgs 911-941).

## **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).

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).

...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).

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).

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 would prevent employability for the necessary durations required by MA and SDA program rules. Put simply, absolutely nothing in this file establishes claimant is physically or mentally incapable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. Therefore, claimant's most recent, disputed MA/SDA application must remain denied, in concurrence with the department's State Hearing Review Team (SHRT) decision dated October 11, 2010 (Department Exhibit #2).

**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 denial is AFFIRMED.

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/S/  
Marlene B. Magyar  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: December 7, 2010

Date Mailed: December 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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