

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: 2010-85
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 7, 2010
Genesee 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 7, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly deny claimant's March 17, 2009 Medicaid (MA)/retro-MA and State Disability Assistance (SDA) application?

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 March 17, 2009, claimant applied for MA/retro-MA/SDA.
- (2) When the department denied that application, claimant filed a hearing request dated August 12, 2009.
- (3) Claimant's hearing was not held until April 7, 2010.

(4) Claimant stands approximately 6'0" tall and is medically obese at approximately 275 pounds (BMI=35.3)(Department Exhibit #1, pg 85).

(5) Claimant is a divorced, right-handed, 48-year-old high school graduate who has been unemployed since suffering an on-the-job injury in September 2006.

(6) At that time, claimant was working as an underground utility locator when he slipped down a wet knoll while marking lines and injured his lower lumbar spine.

(7) Claimant's October 2006 lower lumbar MRI scan revealed a mild posterior disc bulge at L5-S1; more significantly, left-sided foraminal stenosis was seen at T12-L1, L1-L2, L4-L5 and L5-S1, with chronic wedged deformities at L5 and S1 (Department Exhibit #1, pgs 37 and 112).

(8) By December 2006, in addition to chronic lower back pain, claimant developed bilateral leg pain (radiculopathy), as well as urinary urgency; consequently, the consulting neurologist ordered a lumbar myelogram (Department Exhibit #1, pg 37).

(9) This myelogram revealed an unusual posterior L5 wedge compression defect with L2-L3 and L3-L4 stenosis (Department Exhibit #1, pg 37).

(10) Since claimant's accident, he has been treated conservatively with physical therapy, facet injections and narcotic pain medications, none of which have produced any long-term or notable decrease in claimant's ongoing pain levels.

(11) Claimant's September 2007 Medical Examination Report (DHS-49) verifies he has an unsteady gait, lumbar spine osteoarthritis, bilateral lower extremity numbness/tingling (radiculopathy), neuropathy, ongoing muscle spasms and chronic pain with less than a sedentary level of activity medically permitted (Department Exhibit #1, pgs 85 and 86).

(12) Additionally, an independent psychological evaluation conducted in July 2009 assesses claimant with ongoing reactive depression secondary to job loss and medical issues (Department Exhibit #1, pg 8).

(13) This evaluation also references a 2008 surgery for benign brain tumor removal which has left claimant with ongoing headaches and eye twitching, as well as memory and concentration deficits (Department Exhibit #1, pg 8).

(14) Claimant reported his brain surgery took place in [REDACTED] while he was visiting relatives; however, the local office obtained no medical records from that hospital prior to claimant's April 7, 2010 disability hearing date.

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).

Under the Medicaid (MA) program:

"Disability" is:

...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 duration requirement is reduced to 90 days. This means an applicant's impairments must meet the above-referenced disability definition for 90 days in order for that applicant to be eligible for SDA benefits.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone.... 20 CFR 416.945(e).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence,

including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you...

We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

...Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms.... 20 CFR 416.929(c)(3).

...Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account...in reaching a conclusion as to whether you are disabled.... 20 CFR 416.929(c)(3).

...We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons.... 20 CFR 416.929(c)(3).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In claimant's case, the ongoing pain and other non-exertional symptoms he describes (insomnia, depression, anxiety) are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his testimony in this regard.

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).

These same steps are applied in SDA cases. Claimant has not been employed since 2006; consequently, the analysis must move to Step 2.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical and mental limitations upon claimant's ability to perform basic work activities.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that claimant cannot return to his past relevant work experience because those jobs are completely outside the scope of his physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier-of-fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability.

Richardson v Secretary of Health and Human Services, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of claimant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Under these circumstances, claimant is disabled according to MA/SDA program rules. Consequently, the department's denial of his March 17, 2009 MA/retro-MA/SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not currently disabled for MA/retro-MA/SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

(1) The department shall process claimant's March 17, 2009 MA/retro-MA/SDA application, and shall award him all the benefits which he may be entitled, as long as he meets the remaining financial and non-financial eligibility factors.

(2) The department shall review claimant's medical condition for improvement in April 2012, unless his Social Security disability status is approved by that time.

(3) The department shall obtain updated medical evidence from claimant's treating physicians, surgeons, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review, including the [REDACTED] hospital's records regarding claimant's 2008 brain surgery (See Finding of Fact #14 above).

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

Date Signed: May 11, 2010

Date Mailed: May 12, 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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