

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: 2010-9585
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 26, 2010
Emmet County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Tuesday, January 26, 2010. The claimant personally appeared and testified on his own behalf with his wife, [REDACTED] as a witness.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance?

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 July 21, 2009, the claimant applied for MA-P with retroactive MA-P to April 2009.

(2) On October 8, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work under Medical Vocational Grid Rule 201.24 per 20 CFR 416.920(f).

(3) On October 13, 2009, the department caseworker sent the claimant a notice that his application was denied.

(4) On October 20, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On December 22, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to back pain, disc herniation, radiculopathy, and carpal tunnel syndrome. He is 42 years old with 9 years of education and a history of unskilled work.

The claimant does not meet applicable Social Security Listing 1.01. The claimant is capable of performing work that is sedentary and unskilled under Vocational Rule 201.24. This may be consistent with past relevant work. However, there is no detailed description of past work to describe this. In lieu of denying benefits as capable of performing past, a denial to other work based on a Vocational Rule will be used.

(6) The claimant is a 42 year-old man whose date of birth is [REDACTED]. The claimant is 5' 3" tall and weighs 205 pounds. The claimant has gained 60 pounds in the past as a result of his limited movement. The claimant completed the 9th grade of high school. The claimant was Special Education in all subjects. The claimant can read and write and do basic math. The claimant was last employed in December 2007 as a laborer at the heavy level which is his pertinent work history. The claimant has also been employed as a route driver.

(79) The claimant's alleged impairments are degenerative disc disease, carpal tunnel syndrome, back pain, and back fusion in [REDACTED] with disc removal.

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).

"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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...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 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).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s),

including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...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).

...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).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since December 2007. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means, 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant's treating physician submitted a Medical Needs, DHS-54A, on behalf of the claimant. The claimant had recurrent lumbar disc herniation, lumbar radiculopathy, carpal tunnel syndrome, and cervical radiculopathy. The claimant had a chronic

ongoing illness that would require 1-2 office visits per month that will change with surgery. The claimant's medical treatment after surgery would be required for 18-24 months. The claimant is ambulatory and does not need special transportation, but does need someone to accompany him to his medical appointments because of medication compliance. The claimant cannot work his usual job or any job for at least 9 months. The claimant will require additional neurosurgery for remediation of recurrent lumbar disc herniation symptomology. (Department Exhibit 218-219)

On [REDACTED], the claimant's treating physician at [REDACTED] submitted a medical rehabilitation follow-up on the claimant. The claimant was in his usual state of health until [REDACTED] where he had severe lower back pain status post L4-5 fusion with frequently radicular lower extremity pain, ongoing right knee and right wrist pain, proximal upper and lower extremity weakness, distal bilateral upper extremity numbness and paresthesia, and sleeping difficulties secondary to pain. Symptomology reported to continue to worsen with increased activity level, lifting, prolonged standing, and ambulation. The claimant had undergone the second of three lumbar epidural steroid injections, but he indicated that he did not experience any notable reduction in lower back pain and/or lower extremity pain. The claimant had full upper extremity active range of motion with bilateral knee crepitus. No change in lower extremity active range of motion. Persistent bilateral soft tissue hamstring contractors. No obvious leg length discrepancy. The claimant had increased tenderness with palpitation of the lumbar paraspinal musculature of the back. Active lumbosacral spine range of motion remains limited in both forward flexion and extension—20 degrees. Significant pain was reported with movement in all planes with end-of-range forward flexion, extension, and rotation with no instability appreciated. Muscle stretch reflexes graded 2 to 2+/4 bilaterally except the knees 3+/4. Proximal upper body and lower extremity weakness was 4+-5/5. Distal extremity motor power

was graded at 5/5. The claimant had modestly diminished light touch and pinprick sensation in the bilateral L5-S1 dermatomal distributions. He had intact vibration and proprioception sensation throughout. The claimant had normal posture and antalgic gait with slow cadence. The claimant was active and oriented x4 with depressed mood/affect and intact concentration and attention span. (Department Exhibit 197-200)

On [REDACTED], the claimant was given an MRI of the lumbar spine with and without gadolinium from [REDACTED]. The radiologist's impression was evidence of pedicle screws bilaterally within L4 and L5. The pedicle screw on the right at L4 lies in the extreme lateral margin of the pedicle. The graft material is noted within the L4-5 disc space. This material does not appear to be completely incorporated into the adjacent endplates of L4 and L5. The claimant underwent a previous surgical intervention [REDACTED]. There is a broad-based midline soft tissue disc protrusion or herniation at L4-5 causing a mild mass effect on the thecal sac. (Department Exhibit 159)

On [REDACTED], the claimant was admitted to the emergency room with a discharge date of [REDACTED] a [REDACTED]. The claimant was diagnosed with acute exacerbation of lumbar pain. The claimant also had left elbow contusion with possible tiny avulsion fracture with right knee sprain. The claimant is a 41 year-old white male who is on chronic narcotics for his back as well as multiple old chronic pain medication. The claimant stated he fell a couple weeks ago and also had some pain in his left elbow and right knee over the last couple of weeks. The claimant had full range of motion of his elbow. He had slightly decreased flexion of his right knee, but has been walking for the last couple of weeks with an antalgic but ataxic gait. The claimant stated that his kids jumped on his back when they were playing with him. The claimant states that he has chronic back pain, which is worse in the last

couple of weeks where he has run out of his chronic narcotics and other chronic pain medications a couple weeks ago. The claimant stated that his back pain is worse with movement. The claimant had no new localized neurological deficits at all. The claimant was given a short-term narcotic prescription and told to follow-up with his regular physician. The emergency room physician was uncertain as to whether or not the claimant had significant chronic pain exacerbation versus drug-seeking behavior. The claimant was stable when discharged home. (Department Exhibit 100-104)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant had back surgery in [REDACTED]. The claimant's treating specialist is suggesting additional surgery. The claimant got no relief from epidural steroid injections. The claimant's MRI on [REDACTED] showed a mild mass effect of the thecal sac with pedicle screws and a graft that does not appear to be completely incorporated into the adjacent endplates of L4-L5. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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). This Administrative Law Judge finds that the claimant's impairments

do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

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 the claimant does not have a driver's license and does not drive because he lost his license for a charge of maintaining a drug house for a rental unit where he lost his license for one year. The claimant does not cook or grocery shops because he has problems walking and standing. The claimant does clean his own home by washing dishes. The claimant doesn't do any outside work or have any hobbies except for watching TV. The claimant felt that his condition has worsened in the past year because his legs give out once a week. The claimant stated he has no mental impairment. The claimant is currently taking no medications because he can't afford it.

The claimant wakes up at 7:00 a.m. He drinks coffee with his wife. He watches TV. He has a microwave dinner. He goes to bed between 4:00 to 5:00 a.m. because he doesn't sleep well at night.

The claimant felt that he could walk 200 feet. The longest he felt he could stand was 20 minutes. The longest he felt he could sit was 20 minutes. The heaviest weight he felt he could carry and walk was 10 pounds. The claimant stated that he is right-handed. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 7/8. The claimant is currently not taking any medication for pain.

The claimant smokes three cigarettes a day. The claimant stopped drinking in his 20s where before he would have 12 beers a month. The claimant stopped smoking marijuana four years ago. The claimant stated that there was no work that he felt he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant's past work was at the heavy level as a laborer which is his pertinent work history and as a route driver. The claimant with his current back limitations would have a difficult time lifting the weight as required of heavy work. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

The claimant has submitted sufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional.

At Step 5, the claimant cannot meet the physical requirements of sedentary work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a limited or less education, and an unskilled work history, who is limited to sedentary work, is considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 201.18. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical impairments, the Administrative Law Judge finds that the claimant cannot still perform a wide range of simple, unskilled, sedentary activities and that the claimant does meet the definition of disabled under the MA program. The claimant is eligible for retroactive MA-P benefits to April 2009 with a medical review required in May 2012.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant cannot perform any level of simple, unskilled, sedentary work. The department has not established its case by a preponderance of the evidence.

Accordingly, the department's decision is **REVERSED**. The department is ordered to initiate a determination for eligibility retroactive to April 2009 with a medical review required May 2012.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 2, 2010

Date Mailed: April 2, 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.

CGF/vmc

cc:

