

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: 2010-15145

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 11, 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 February 11, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly deny claimant's April 13, 2009 Medicaid (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) Claimant is a divorced, 52-year-old male with a limited education (completed 10th grade) and an unskilled, manual labor employment history (30 years) in heavy road construction; he stands approximately 5'7" tall, weighs approximately 168 pounds and is right hand dominant (Department Exhibit #1, pgs A53 and A66-A67).

(2) Claimant has not worked in road construction since 2004; however, he did perform general maintenance duties in apartments owned by his son until 2008, when low back pain and bilateral leg/hip pain stopped him from continuing in this, or any other line of work.

(3) Claimant's treating doctor since 2008 ordered several objective medical tests to determine the cause of claimant's chronic pain, including x-rays, bone density and EMG/MRI testing.

(4) Claimant's March 2008 lumbar spine x-rays series detected only very minimal scattered degenerative changes at L3-L4 and L5-S1 (Department Exhibit #1, pg A42).

(5) Claimant's August 2008 EMG testing detected a chronic, L4-L5 radiculopathy; consequently, a lumbar spine MRI scan was ordered (Department Exhibit #1, pg A43).

(6) Claimant's December 2008 lumbar spine MRI scan shows three areas of compromise beginning with L3-L4, where mild circumferential disc bulging without stenosis and mild facet hypertrophy/mild neural foraminal narrowing without nerve root impingement can be seen (Department Exhibit #1, pgs A38 and A39).

(7) Additionally, this scan reveals moderate disc bulging with a shallow disc protrusion at L4-5 on the right, absent central canal stenosis or disc herniation (Department Exhibit #1, pgs A38 and A39).

(8) Lastly, at L5-S1 moderate disc bulging is again evidenced with bilateral foraminal stenosis (moderate on the right and mild on the left), as well as bilateral nerve root impingement at the existing L5 nerve roots (Department Exhibit #1, pgs A38 and A39).

(9) Claimant's December 2008 bone density scan also reveals left hip and lumbar spine osteopenia (a precursor to osteoporosis)(Department Exhibit #1, pgs A40 and A41).

(10) On July 20, 2009, claimant's treating doctor completed a Medical Examination Report (DHS-49) which states claimant's condition is deteriorating and limits claimant to less than sedentary exertional work activities (Department Exhibit #1, pgs A3 and A4).

(11) Claimant's treating doctor is currently attempting pain management with [REDACTED] and a sleep aid because claimant's sleep is unrefreshing due to repeated nightly wake-ups caused by his chronic pain; a neurosurgery consult has been medically recommended (Department Exhibit #1, pg A50).

(12) Claimant's ongoing symptoms include continued high level pain despite medication compliance and exacerbated pain levels upon minimal exertion, as well as sleeplessness and chronic leg numbness consistent with the radiculopathy demonstrated by EMG testing (See Finding of Fact #5 above).

(13) Claimant noted he attempted lumbar facet joint injections with short-lived symptom relief (Department Exhibit #1, pg A46).

(14) In addition to claimant's verified lumbar disc disease and osteopenia, the pain management doctor who performed these injections added Myofascial Pain Syndrome and generalized osteoarthritis to claimant's listed physical impairments, not uncommon for someone with claimant's extensive heavy exertional work history and age (Department Exhibit #1, pg A46)(See also Finding of Fact #1 above).

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).

"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 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.

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).

...We will consider whether there are any inconsistencies in the evidence and the extent to which there are any conflicts between your statements and the rest of the evidence, including your medical history, medical signs and laboratory findings, and statements by your treating or examining physician or psychologist or other persons about how your symptoms affect you.... 20 CFR 416.929(c)(4).

[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).

In claimant's case, the pain and other related symptoms he describes are consistent with the objective medical evidence presented, and with his treating physician's physical exertional limitations. Consequently, great weight and credibility must be given to claimant's 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).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he is not currently employed and he has not been employed since 2008.

At Step 2, the objective medical evidence clearly shows claimant's intractable pain has lasted the durational periods required to continue this inquiry into his alleged disability.

At Step 3, claimant's physical impairments, when combined, do not appear to rise to the level necessary to be specifically disabling under the law; consequently, an analysis of his ability to engage in his past relevant work is required.

At Step 4, it is clear claimant cannot perform his past relevant work given the severe, non-exertional pain limitations he faces in light of his verified diagnoses. Consequently, an analysis of the very last step of the required sequential evaluation must be made.

At Step 5, an applicant's age, education, work experience and residual functional capacity are assessed, in relation to the guidelines set forth in the federal regulations. However, these rules do not apply in cases where an applicant is found to have no residual functional capacity because he or she cannot perform even sedentary work, as that term is defined at 20 CFR 416.967(a).

Under the facts and circumstances presented by this case, claimant has shown, by clear and convincing documentary evidence and credible testimony, that his limitations have been severe enough to prevent him from engaging in even sedentary work for the requisite durations, at least until his prognosis for recovery through surgical intervention can be fully assessed by a

consulting neurosurgeon. Consequently, claimant meets the MA/SDA durational criteria and disability standards cited above and the department's finding to the contrary 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 denying claimant's April 13, 2009 MA/SDA application based on a finding of lack of disability.

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

(1) The department shall process claimant's disputed application and shall award him all of the benefits to 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 condition for medical improvement in February 2012, unless claimant's Social Security disability allowance is received by that time.

(3) The department shall obtain updated medical/surgical evidence from claimant's treating physicians, surgeons, physical therapists, pain clinic doctors, etc. regarding his continued treatment, progress and prognosis at review.

(4) The department also shall schedule claimant for an independent consultative physical examination at the time of review.

/s/

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

Date Signed: March 2, 2010

Date Mailed: March 3, 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 receipt 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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