

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: 201023703

Issue No: 2009/4031

[REDACTED] [REDACTED]
Hearing Date:

April 27, 2010

Bay 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, an in-person hearing was held on April 27, 2010. Claimant and his mother 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 as material fact:

1. Claimant is a young individual (37) with a high school diploma and a valid driver's license.
2. Claimant has never been married but he currently resides with a long term partner in [REDACTED]
3. Claimant was a union construction worker and heavy equipment operator until he was struck by lightning on a job site in July 2009.
4. Claimant has remained unemployed since this accident (Department Exhibit #1, pg 16).

5. Claimant applied for Social Security Administration (SSA) disability benefits secondary to his lightning strike residuals (e. g., reported memory loss, depression, back/muscle problems, pain/numbness in all extremities, fatigue, etc.).
6. On April 6, 2010, the SSA issued claimant a disability denial notice which acknowledges some ongoing problems but finds claimant retains the ability to carry out less strenuous work (Client Exhibit A).
7. On November 25, 2009 (contemporaneous with claimant's SSA application filing) he also filed a disability-based MA/SDA application.
8. When that application was denied claimant requested a hearing, held April 27, 2010.
9. Claimant stands approximately 5'7" tall and is medically obese at approximately 230 pounds (BMI=36); he is right hand dominant (Department Exhibit #1, pg 127; Client Exhibits D-J).
10. Claimant alleges disability due to chronic fatigue and "pain all over" with continued memory lapses and difficulty concentrating since the lightning strike.
11. In October 2009 (3 months post injury), a consulting neurologist ordered EEG and B12 testing, both of which came back normal (Department Exhibit #1, pg 85)(See also Finding of Fact #14 below).
12. On November 16, 2009 (the MA/SDA application filing month), claimant underwent an independent medical evaluation to determine the extent of his limitations upon physical examination and full review of test results to date (Department Exhibit #1, pgs 87-92).
13. The examining physical medicine and rehabilitation specialist concluded as follows:

[Claimant] is a 36-year-old gentleman who presents with multiple complaints attributed to an electric shock injury due to lightning, which occurred during the course of his employment on July 22, 2009. The clinical examination fails to reveal objective evidence of significant orthopedic or neurologic pathology affecting the spine and extremities. Several inconsistencies are noted, including apparent breakaway weakness of the proximal and distal leg muscles bilaterally, although he demonstrated the ability to walk on heels and toes, squat, as well as

step up and off of a nine-inch-high step stool without difficulty. Certainly moving his own body weight against gravity requires more strength than manual muscle testing against resistance provided by this examiner's arms. This finding suggests intentional exaggeration of his apparent weakness.

Although he reports some sensory loss, distal reflexes are remarkably brisk, there is no clinical evidence to suggest peripheral neuropathy or even focal neuropathy of the left leg where sensory deficits are more prominent.

Based on my evaluation of [claimant], he does not require additional testing or treatment as it relates to the reported electric shock/lightening injury of July 22, 2009. He does not require formal activity restrictions (Department Exhibit #1, pg 91).

14. Likewise, in October 2009, the consulting neurologist found no significant abnormalities in claimant's speech, memory, sensations, vision, co-ordination, upper/lower motor strength or gait; however, claimant reported a slight decrease during left thigh pinprick testing and demonstrated subtle give way weakness (Department Exhibit #1, pgs 98 and 99)(See also Finding of Fact #11 above).
15. Other than ongoing medication for control of claimant's self-reported pain symptoms (Vicodin), no drugs were being prescribed as of his MA/SDA hearing date except a short-term antibiotic for a tooth infection.
16. In July 2010, claimant underwent a post-hearing, independent neuropsychological evaluation in which his general intellectual activities tested in the average range, consistent with claimant's education and occupational background.
17. This testing was completed by a specialist at [REDACTED] who concluded in relevant part:

...Measures of memory showed poor performance on one set of tasks (Wechsler Memory Scale-III), though these scores were in a range which is highly suspicious of incomplete effort. Performance on a word list learning task, a task generally considered to be more difficult, was Low Average. On measures of higher order abstract reasoning and executive function, the patient performed within normal limits on

one test commonly regarded to be generally sensitive to brain dysfunction, and poorly on another, though again, in a range suggestive of incomplete effort. Performance on a fine motor coordination task was poor for both hands. Personality test measures were consistent with symptom exaggeration and somatic preoccupation, though they were also suggestive of acute clinical depression and psychological distress. A tendency toward somatic expression of psychological distress and conflict was clearly present. Specific measures of effort were also given to the patient and, unfortunately, he did poorly on these.

I have not had the opportunity to review medical records for the patient and can address his injury only from his self-report. His description appears credible and he does appear to have suffered an electrical injury from being struck by lightning. Reports of individuals having suffered similar injuries often include deficits in divided attention, mental slowing, problems with shifting cognitive set, and memory difficulties. For this patient, the pattern is unclear. His attention/concentration abilities appear quite intact, save for slowed information processing, which does appear to be significant. The patient's performance on measures of memory is inconsistent, and there is a strong suggestion of incomplete effort on some of the tests. There appears to be a significant psychological reaction and a focus on somatic symptoms, though this has also been reported to not be uncommon following electrical injury. However, there does appear to be a fair amount of symptom exaggeration and less than complete effort on some of the administered tests...

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).

Michigan administers the federal MA program. In assessing MA eligibility, Michigan defers to the federal rules. These rules are also applied in SDA cases except for a shorter durational requirement of 90 days. These rules state in relevant part:

"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. [SDA Duration=90 Days].

...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).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...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).

At application, an applicant has the burden of proof pursuant to the following section:

...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 federal regulations are very specific regarding the type of medical evidence required from an applicant to establish disability. The regulations essentially require laboratory or clinical reports consistent with an applicant's reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in part:

...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)

...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)

...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).

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

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).

...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). [SDA Duration=90 Days].

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

Applying the required sequential analysis herein, claimant would remain eligible at the first step since he has not worked anywhere since 2009.

The second step of the analysis assesses the severity of all documented impairments. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, the evidence of record establishes severity is met.

The third step of the analysis looks at whether an applicant meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not. As such, the analysis must continue.

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. This step examines the physical and mental demands of the work done by the applicant in the past. 20 CFR 416.920(e). This Administrative Law Judge will again find in favor of claimant because his combined exertional and non-exertional

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.

MBM/db

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