

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: 2010-33964
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 8, 2010
Montmorency 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 June 8, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly deny claimant's February 9, 2010 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 47-year-old male with multiple college credits (no degree); however, he is Microsoft certified (MSP) and he has worked extensively in computer design, set-up, repair, maintenance, rebuilding and overall computer troubleshooting (medium/heavy exertional activity).

(2) Claimant has not been employed since he was broadsided by a car while riding his motorcycle on October 17, 2007, and also, he is physically incapable of returning to his former, active lifestyle which included long distance bicycling, weightlifting, backpacking and Martial Arts instruction.

(3) Claimant's lower lumbar spine was fractured in the accident, thus requiring an L2-S1 posterior fusion and an L3-L4 laminectomy/decompression, followed by a lengthy rehabilitation to re-learn to walk (Department Exhibit #1, pgs. 1-3).

(4) Claimant's treating specialist dictated the following summary of claimant's treatment/progress on January 19, 2009 (nearly 1 ½ years post-accident), which states in relevant part:

Unfortunately, [Claimant's] postoperative course was complicated by a CSF leak and fistula, which required operative repair. I encountered the patient at [REDACTED] where he had been sent for rehabilitation. At that time his issue involved urinary retention in excess of 500 ml. The patient had no previous urologic histories prior to this accident. Attempts at managing the patient with a [REDACTED] catheter and [REDACTED] and [REDACTED] proved unsuccessful in improving his retention. Initially it was felt that he may merely be in spinal shock.

Upon discharge from rehabilitation I saw the patient in the office to perform urodynamics. His initial urodynamics study showed an atonic bladder with urinary retention although in this initial timeframe the possibility of spinal shock and recovery of function was still a possibility. The patient was taught intermittent catheterization and placed on a protocol to do so every four hours. He was able to manage this at home without difficulties.

A repeat urodynamics study more than six months after his initial injury showed that the patient still had atonic neurogenic bladder with no evidence of any detrusor pressure generated on either filling or attempts at voiding. His capacity was good but he was unable to void except with [REDACTED] maneuver which indicated that his bladder was not working at all.

The patient's symptoms have remained unchanged over the next year and a half. I have informed him that essentially this will be a chronic condition requiring long-term intermittent catheterization. He has an areflexic atonic bladder secondary to his lumbar spinal cord injury and return of bladder function is extremely unlikely at this point being that we are nearing two years since his accident. He will need to remain on intermittent catheterization likely for the remainder of his life (Department Exhibit #2, page 18).

(5) As of claimant's June 8, 2010 hearing date, his atonic neurogenic bladder had worsened to the point where self-catheterization always is required for urination.

(6) With this activity comes chronic, severe urinary tract infections causing the typical painful, burning symptoms which require frequent use of prescription antibiotics.

(7) In addition to claimant's unresolved urinary tract infections and constant requirement for self-catheterization, he lives with daily impacted fecal symptoms including frequent straining, bloating, abdominal cramping and watery stools which result in diarrhea and soiling.

(8) For claimant's continued lower lumbar pain symptoms his treating doctor has prescribed [REDACTED] daily, which does little to resolve his ongoing spine and right foot/ankle pain (See also Finding of Fact #10 below).

(9) A Medical Examination Report (DHS-49) dated February 11, 2010 notes claimant has a profound limp and requires the use of a cane/walking stick; he also uses a TENS unit with some minimal pain relief (Department Exhibit #1, pgs. 21-23).

(10) In addition to claimant's spinal impairments and bladder/bowel problems, his treating doctor indicates claimant has developed post-traumatic right foot/right ankle osteoarthritis with increased warmth/swelling, and absent the right Achilles reflex (Department Exhibit #1, pg. 23).

(11) Claimant's basic daily living activities have been significantly compromised since his accident to the point where he spends most of his time laying on his side to lessen his ongoing lower back pain (sciatica) and his bilateral leg pain (radiculopathy).

(12) The Medical Examination Report (DHS-49) claimant's treating doctor completed in February 2010 supports the severity of claimant's impairments and claimant's credibility regarding his ongoing pain levels; additionally, this doctor notes claimant's comprehension/memory/concentration/social interaction have all been negatively affected by his overall condition since the motorcycle accident occurred.

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.

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).

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). In this case, claimant has not worked since October 2007 when he got into his motorcycle accident on the way to work (See Finding of Fact #2 above). Consequently, the analysis must continue.

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.

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 his 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 is incapable of

returning to his past relevant work due to the severity of his physical impairments and the residual affects this accident has had on him both physically and mentally.

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 you 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 February 9, 2010 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 does not meet the MA/SDA disability standards necessary to qualify for MA/SDA benefits.

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

(1) The Department shall process claimant's February 9, 2010 MA/SDA application and shall award him all 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 improvement in June 2012.

(3) The Department shall obtain updated evidence from all claimant's treating doctors regarding his continued treatment, progress and prognosis at review.

(4) The Department shall send claimant to independent physical and psychological examinations at review.

/s/

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

Date Signed: July 12, 2010


Date Mailed: July 14, 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.

MBM/cv

cc:

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