

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 201048105
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 15, 2010
Livingston 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on September 15, 2010. Claimant 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 a material fact:

1. Claimant is a widowed, 52-year-old high school graduate who is medically obese at 5' 8" tall and 240 pounds (BMI=36.5); he is right hand dominant, per self report (Department Exhibit 1, pg. 8).
2. Claimant is a former small business owner (plumbing, electrical and home remodeling); also, he worked as a CDL certified trucker until January 2009, when he quit because he was dissatisfied with the employer compensation (didn't "get what he was promised") (Department Exhibit 1, pgs. 13-14).
3. Claimant has remained unemployed since January 2009.

4. On June 28, 2010, claimant applied for a disability-based monthly cash grant (SDA) and medical coverage (MA).
5. When the department denied that application claimant filed a hearing request, held by conference telephone on September 15, 2010.
6. Claimant lives alone in Livingston County, Michigan; he is independent in all self cares/basic daily living activities; also, claimant has a valid driver's license and a roadworthy vehicle (Department Exhibit 1, pgs. 15-18).
7. Claimant was diagnosed with asthma in childhood and he has continued to have intermittent, acute flare-ups in adulthood; the standard bronchodilators have been prescribed for symptom management (Advair/Albuterol/Singular) (Department Exhibit 1, pgs. 5 and 28-29).
8. Additionally, claimant has been diagnosed with high blood pressure not uncommon in obesity patients and currently well-controlled (124/84) with current prescription medication (Department Exhibit 1, pgs. 5 and 24).
9. In ██████████, claimant broke his right ankle (a trimalleolar fracture) while doing work for a customer when he owned his home remodeling business (Department Exhibit 1, pg. 139).
10. This injury necessitated surgical open reduction with internal fixation (ORIF) on ██████████, followed by outpatient removal of the supportive hardware on ██████████; no complications are noted (Department Exhibit 1, pgs. 66, 77-80 and 139-140).
11. Ten years later, when claimant filed his disability application, the department's processing worker observed a slight limp (Department Exhibit 1, pg. 7).
12. No ambulatory devices have been prescribed and claimant takes Ibuprophen 800 (as needed) for pain management; additionally, weight loss has been medically recommended to lessen the stress on claimant's right ankle (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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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.

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.

...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).

...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).

...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, claimant 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 claimant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with claimant'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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 sequential analysis herein, claimant would remain eligible at the first step since he has not worked anywhere since 2009, when he quit his most recent trucking job. 20 CFR 416.920(b). (See also Finding of Fact #2 above).

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 individual meets or equals one of the listed impairments. 20 CFR 416.920(d). Claimant does not. As such, this 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 in light of the documentary evidence presented. 20 CFR 416.920(e).

In this case, the record supports a finding claimant could not return to home remodeling or trucking with its inherent duties (loading/unloading/standing/walking) because those positions required excessive exertional activities which might exacerbate claimant's shortness of breath and/or ankle pain symptoms. Consequently, this analysis must continue.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical Vocational Grid Rules to determine the functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the medical evidence presented, this Administrative Law Judge finds Medical Vocational Rule 202.13 would direct a finding of not disabled. The medical documentation in claimant's file is insufficient to indicate his conditions, standing alone or combined, would interfere with his ability to engage in other work, specifically, light work, as the department's State Hearing Review Team (SHRT) doctors concluded in their opinions dated August 20, 2010 and September 23, 2010. Put simply, when taken as a whole, the evidence in this file fails to meet the regulatory requirements necessary to qualify for disability-based MA or SDA. Consequently, claimant's disputed application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled.

Accordingly, the department's action is AFFIRMED.

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

Date Signed: December 2, 2010

Date Mailed: December 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 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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