

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.: 2010-51804
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 13, 2010
DHS County: Wayne (82-49)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was conducted on December 13, 2010. Claimant appeared and testified at the hearing. [REDACTED] appeared and testified as a witness for Claimant. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant's disability meets the medical criteria for eligibility for Medical Assistance (MA or Medicaid), retroactive MA, and State Disability Assistance (SDA) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On April 4, 2010 Claimant filed for MA, MA retroactive, and SDA benefits.
2. Claimant's impairments have been medically diagnosed as anterolisthesis with L5 radiculopathy and severe degenerative joint disease.
3. Claimant's physical symptoms are chronic severe back pain, leg pain in both legs, and headaches. Claimant has difficulty walking, sitting and standing. Claimant testified he takes Vicodin, morphine, Soma and other pain medications.

4. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
5. Claimant is 5'9" tall and weighs 210 lbs.
6. Claimant is 49 years of age. His date of birth is [REDACTED].
7. Claimant received his Graduate Equivalency Diploma (GED) in 1976.
8. Claimant is able to read, write and perform basic math skills.
9. Claimant last worked at [REDACTED] as a Dietary Aide. In this job he handled food products, cooked, delivered food to patient rooms, and maintained and cleaned up the kitchen and food stations. He had no computer responsibilities. He spent 70% of his work hours walking, squatting and bending. He spent 40-50% of the time carrying items weighing 30-80 lbs.
10. Claimant has prior employment experience as a carpenter, mechanic and machine operator, and parking lot attendant. Claimant testified he cannot do any of these jobs, as well as the Dietary Aide job at [REDACTED].
11. Claimant testified to the following physical limitations:
 - Sitting: uncomfortable after 15-20 minutes.
 - Standing: 10 minutes at a time.
 - Walking: Claimant can walk no more than five minutes at a time, and does use a cane.
 - Bend/stoop: Claimant cannot perform these motions.
 - Lifting: Claimant cannot do any lifting.
 - Grip/grasp: Claimant is weak in his dominant, right, hand.
12. Claimant lives by himself in a family-owned house.
13. Claimant performs no household chores. He can hand his own dishes to someone from the table, but cannot carry dishes to the sink or wash dishes. He cannot do his laundry, make the bed, take out the garbage or perform yard work.
14. On July 28, 2010 Claimant filed a notice of hearing request with DHS.

15. On September 9, 2010, DHS' State Hearing Review Team (SHRT) found Claimant was not disabled and denied his application for MA, MA retroactive and SDA benefits.
16. Medical records examined are, in part, as follows:

A. TREATING PHYSICIAN REPORT TO DHS

[REDACTED]
[REDACTED] stated in his report that Claimant has anterospodylolisthesis with L5 radiculopathy, and that Claimant is totally incapacitated from meeting his needs in the home.

B. TREATMENT RECORDS SUMMARY

[REDACTED]
Back pain increased.

[REDACTED]
Positive straight-leg raising, right and left sides.
Prescriptions for Tylenol, MS Contin, (illegible) and Vicodin.
Severe degenerative joint disease.
Spondylolisthesis with grade 1 anterospodylolisthesis at L4-L5.
Meralgia paresthetica.
Boston back brace.

[REDACTED]
Positive straight leg raising at 25 degrees, right and left sides.
Patient complains of severe back pain.

[REDACTED]
Patient has lower back pain.
Referral for open MRI of the lumbosacral spine, for back pain and severe degenerative joint disease.

C. TESTING SUMMARY

- [REDACTED]:
1. Advanced degenerative disk disease at L4-L5 and L5-S1 associated with marginal osteophytes and diffuse disk bulge with left paracentral disk protrusion at L4-L5 as described.

2. Facet hypertrophic arthropathy and narrowing of the neural foramina at L4-L5 and L5-S1.

██████████ Chest X-Ray:
Minimal levoscoliosis is noted at T9.

██████████ X-Ray Lumbar Spine:
Moderate disc disease at L4/L5 and L5/S1.

██████████ Electroneuromyogram:
Limited study...no definite electrodiagnostic evidence of a right lateral femoral cutaneous mononeuropathy, though it cannot be completely excluded by this test...[t]he patient's presentation and neurological examination could be consistent with meralgia paresthetica due to transient compression...

██████████ Chest X-Ray:
No active lung disease.

- ██████████ MRI Lumbar Spine:
1. Improvement in that the L4-5 paracentral disc protrusion on the left appears smaller.
 2. Foraminal stenosis on the right at L4-5 is similar in appearance to the previous study. Otherwise at L4-5 and L5-S1 there is foraminal narrowing.
 3. There is no evidence of spinal stenosis. There are severe degenerative changes of the (last page missing)...

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

Federal regulations require that DHS use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the U.S. 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 finder of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed, in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. If the factfinder finds disability at a particular step in the process, then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activity. 20 CFR 416.972(a). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she or he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she or he is not disabled regardless of how severe the physical and mental impairments are and regardless of age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, Claimant has not worked since 2005. Therefore, Claimant is not engaged in SGA and is not disqualified at the first step of the analysis. I, therefore, proceed to the second step of the required analysis.

2. Medically Determinable Impairment – 12 Months

Second, 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 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, coworkers 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 medical merit. The court in *Salmi v Secretary of Health and Human Services*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* at 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6th Cir 1985).

In this case, Claimant has presented medical evidence of radiculopathy, anteriospondylolisthesis, meralgia paresthetica, and disc protrusion and foraminal stenosis at two locations of the spine. In addition, Claimant’s physician has stated in his report to DHS that Claimant is at “total incapacity.” I find that the medical evidence establishes that Claimant has physical impairments that have more than a minimal effect on basic work activities, and Claimant’s impairments can be expected to last for at least twelve months.

3. Listed Impairment

After reviewing the criteria of listing 1.04, *Disorders of the Spine*, the undersigned finds that Claimant’s medical records substantiate that Claimant’s medical impairments meet or are medically equivalent to the listed requirements. 20 CFR 404 §1.04 describes Disorders of the Spine as follows:

Disorders of the Spine (e.g. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours.

or

- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

In the case before me, Claimant has radiculopathy, anterospodylolisthesis, meralgia paresthetica, disc protrusion and foraminal stenosis. Claimant is experiencing lower back pain, difficulty sitting, standing and walking, and he cannot bend, stoop, and lift. Claimant's physician found positive straight leg raising on the right and left sides.

Considering all of the above, the undersigned finds that Claimant's medical records substantiate that Claimant's physical impairments meet or are medically equivalent to the listing requirements of 1.04(A). In this case, this Administrative Law Judge finds Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As Claimant is disabled, there is no need to evaluate Claimant with regard to the fourth or fifth steps.

The State Disability Assistance (SDA), program which provides financial assistance for disabled persons, was established by 1939 Michigan Public Acts 280. DHS administers the SDA program pursuant to MCL 400.1 *et seq.*, and Michigan Administrative Code Rules 400.3151-400.3180. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).which can be found online at www.michigan.gov/dhs-manuals.


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 ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on 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 BEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairments have disabled him under SSI disability standards. This Administrative Law Judge finds that Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled from all work as of April 4, 2010.

Furthermore, DHS is ordered to initiate a review of Claimant's April 4, 2010, application, if not done previously, to determine Claimant's non-medical eligibility for MA, retroactive MA and SDA. DHS shall inform Claimant of its determination in writing. This case shall be reviewed in December 2011.


Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 21, 2010

Date Mailed: December 22, 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.

JL/pf

cc:

