

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: 2010-92
Issue No: 2;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

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 hearing was held on November 18, 2009.

ISSUE

Did the department properly determine that Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On January 21, 2009, Claimant applied for MA-P and SDA benefits.
- (2) On July 23, the Medical Review Team denied Claimant's request for MA-P and SDA benefits.

(3) On July 28, the department notified Claimant that he was denied MA-P and SDA benefits.

(4) On August 18, 2009, the department received Claimant's hearing request, protesting the denial of MA-P and SDA benefits.

(5) The State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits.

(6) Claimant applied for disability benefits based on having a history of chronic back pain and chronic obstructive pulmonary disease (COPD). (Department Exhibit 1, pp. 56)

(7) In October 2005, Claimant underwent back surgery and had hardware installed. (Department Exhibit 1, pp. 7 & 56)

(8) On January 9, 2008, Claimant underwent a left small finger irrigation, exploration and repair of the radial digital nerve and flexor digitorum superficialis tendon after being diagnosed with left small finger radial digital nerve laceration and flexor tendon lacerations; and there were no complications from the surgery. (Department Exhibit 1, p. 38)

(9) According to an Internal Medical Report dated April 20, 2009: Claimant was 5'5 ¼", and he weighed 189 ½ pounds; Claimant's blood pressure was 130/72; the examination of Claimant's heart, ears, eyes, nose and throat was normal; the examination of Claimant's heart, lungs, abdomen was normal; the examination of Claimant's extremities revealed musculoskeletal limitations on flexion and extension of the lumbar spine and abduction and adduction of both hips; Claimant's straight leg raising was worse on the right, on supine, which was limited to 50 degrees, on the left it was 75 degrees, and sitting down was bilateral 75 degrees; despite limitations with straight leg raising, Claimant was able to walk on his toes and heels, and his tandem gait was normal; Claimant's grip strength was normal; Claimant had a scar on his left

arm, but no limitations as far as flexion and extension of the left arm; and the range of motion of all of Claimant's joints was normal. (Department Exhibit 1, pp. 7-11)

(10) On April 20, 2009, a qualified medical source completed a Neurologic, Orthopedic or Physiatric Supplemental Report, indicating that Claimant was able to stand, bend, stoop, carry, push, pull, button his clothes, tie his shoes, dress-undress, dial a telephone, open a door, make a fist, pick up a coin and pencil, write, squat and arise from squatting, get on and off the examining table, climb stairs; complete finger to finger, finger to nose, and heel to shin; walk on heels and toes and tandem walk; Claimant did not need an ambulatory device for walking; and Claimant's grip strength was normal at 5/5. (Department Exhibit 1, pp. 12 & 13)

(11) Claimant's MRI of the lumbar spine, done on April 23, 2009, revealed the following: epidural fibrosis at L4-L5, likely creating some mass effect upon the left exiting nerve; spinal fusion hardware at L4-L5; and no evidence of a herniated disc. (Department Exhibit 2)

(12) Claimant is a 49 year-old male with a high school education and skilled work experience as a production supervisor, and he did skilled factory work.

(13) Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

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).

Current legislative amendments to the Act delineate eligibility criteria as implemented by agency policy set forth in program manuals.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

"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.

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).

Since Claimant was not engaged in substantial gainful activity at any time relevant to this matter, the analysis continues.

...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).

...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).

...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).

...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).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

[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).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Claimant applied for disability benefits based on having a history of chronic back pain and chronic obstructive pulmonary disease (COPD). Claimant's MRI of the lumbar spine, done on April 23, 2009, revealed the following: epidural fibrosis at L4-L5, likely creating some mass effect upon the left exiting nerve; and spinal fusion hardware at L4-L5. Claimant provided the necessary objective medical evidence to establish that he has a combination of physical problems that would significantly affect his ability to work and meet the MA-P and SDA duration standard. Therefore, the analysis continues.

Claimant failed to establish that he has a severe impairment which meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1. Therefore, the analysis continues.

Based on the objective medical evidence on the record, Claimant's physical limitations would compromise his ability to do his past relevant work. Claimant testified that he worked 20

years in the factory doing medium to heavy work. Claimant did not provide the necessary evidence to establish that he will be unable to his past relevant work as a production supervisor. However, the analysis will continue to determine Claimant's residual functional capacity or what he is able to do despite limitations. 20 CFR 416.945 and 20 CFR 416.961.

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).

This Administrative Law Judge finds that Claimant should be able to do at least sedentary work. According to an Internal Medical Report dated April 20, 2009: Claimant was able to walk on his toes and heels, and his tandem gait was normal; Claimant's grip strength was normal; Claimant had a scar on his left arm, but no limitations as far as flexion and extension of the left arm; and the range of motion of all of Claimant's joints was normal. On April 20, 2009, a qualified medical source completed a Neurologic, Orthopedic or Physiatric Supplemental Report, indicating that Claimant was able to stand, bend, stoop, carry, push, pull, button his clothes, tie his shoes, dress-undress, dial a telephone, open a door, make a fist, pick up a coin and pencil, write, squat and arise from squatting, get on and off the examining table, climb stairs; complete finger to finger, finger to nose, and heel to shin; walk on heels and toes and tandem walk; Claimant did not need an ambulatory device for walking; and Claimant's grip strength was normal at 5/5. Claimant's MRI of the lumbar spine, done on April 23, 2009, revealed no evidence of a herniated disc.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is a young individual with a high school education and skilled work experience. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rule 201.21 as a guideline, claimant would be considered not disabled. According to this Medical Vocational Rule, a young individual under the age of 50, with a high school education and skilled work experience, skills not transferable, limited to sedentary work, is not disabled. Even if Claimant had unskilled work experience, he would still be considered not disabled, using Medical Vocational Rule 201.18 as a guideline.

In conclusion, Claimant does not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the department's MA-P and SDA decision is upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined that Claimant did not meet the MA-P and SDA disability standard.

Accordingly, the department's MA-P and SDA decision is affirmed.

/s/

Marya A. Nelson-Davis
Administrative Law Judge
for Ismeal Ahmed, Director
Department of Human Services

Date Signed: March 31, 2010

Date Mailed: March 31, 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.

MAND/db

cc:

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