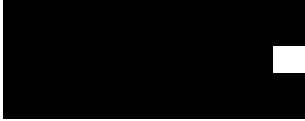


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 2011-50731
Issue No. 2009/4031
Case No. [REDACTED]
Hearing Date: December 1, 2011
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 December 1, 2011. Claimant personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On February 7, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

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. On April 5, 2011, Claimant applied for disability-based medical coverage (MA) and a monthly cash grant (SDA).
2. On July 13, 2011, the Medical Review Team (MRT) denied Claimant's MA and SDA application indicating Claimant was capable of performing sedentary work. (Department Exhibit A, pp 1-2).
3. On July 5, 2011, the department caseworker sent Claimant notice that his application was denied.

4. On August 17, 2011, Claimant filed a request for a hearing to contest the department's negative action.
5. On October 20, 2011, the State Hearing Review Team (SHRT) upheld the denial of SDA benefits due to Claimant's capacity to perform a wide range of sedentary work, based on Medical Vocational Rule 201.21. (Department Exhibit B, pp 1-2).
6. On February 7, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA and SDA benefits indicating Claimant retained the capacity to perform a limited range of light work, avoiding frequent overhead reaching with his right arm and frequent bending, stooping, climbing, crouching and crawling using Medical Vocation Rule 201.18 as a guide. (Department Exhibit C, pp 1-2).
7. Claimant stands 5'8" tall and weighs 180 pounds. Claimant is [REDACTED] [REDACTED] single male, with a high school education and a valid driver's license, but rarely drives due to the numbness in his legs after sitting for 30 minutes.
8. Claimant last worked in December 2001 for [REDACTED] as a baggage handler and currently lives with his sister and receives food stamps.
9. Claimant alleges debilitating lower back pain due to herniated discs in his neck and low back, severe stenosis, and osteophytes, combined with his pain symptoms cause him to meet the disability standard necessary to qualify for the benefits he seeks.
10. Claimant's past surgical history includes a stent placement to the left anterior descending in January, 2005. Claimant underwent arthroscopy of the right knee with partial medial meniscectomy in May, 2010.
11. On March 8, 2011, Claimant's physician's assistant provided a written statement indicating Claimant is unable to work in any capacity due to degenerative disc disease, cervical stenosis, herniated discs, ACL knee injury, and very limited mobility in his neck and lower back areas. The PA noted that Claimant's condition is worsening. (Department Exhibit A, p 19).
12. On March 14, 2011, Claimant had a consultation at the [REDACTED] [REDACTED] which revealed he has a chronic ACL deficiency with some early arthritic changes in his right knee and he still has some crepitation at the patellofemoral joint with range of motion testing. (Department Exhibit A, p 109).

13. On June 17, 2011, Claimant underwent a disability evaluation for pain in the neck, lower back and mid thoracic region. The examining physician noted Claimant has a lot of pain and tenderness in his neck. He has trouble turning his neck to the left. He has pain turning the neck to the right but is able to do so. He also has problems with flexion and extension of his neck. He has a lurching type of gait but does not use an assistive device for walking. He has pain with movements of his right shoulder. He has trouble lifting his right arm above his head. He has difficulty extending the right thumb but he has good fine dexterity. He does not use the right hand very much. He had great difficulty bending and touching his toes. He was unstable on his right leg and could not walk on heels and toes. Straight-leg raising was normal with the left leg but limited with the right because of pain and weakness in the right knee. In order to bend the right knee he had to turn the leg laterally; otherwise he could not bend the right knee. The examining physician opined that Claimant's pain appeared genuine. He has a very unstable right knee as a result of the torn ACL. This would limit his ability to climb stairs or climb up and down in planes, which was the job he used to do in the past. Diagnoses: Chronic pain in the neck secondary to prolapsed intravertebral disc. Chronic back pain and chronic mid thoracic pain secondary to degenerative disc disease. Instability of the right knee secondary to torn ACL and torn meniscus. (Department Exhibit A, pp 3-7).
14. On December 28, 2011, Claimant underwent a cervical spine MRI scan which revealed moderate partially intraforaminal disc herniation on the right superimposed on a minimally bulging annulus C4-C5 producing right C5 root encroachment and minimally bulging annuli without superimposed disc herniation C5-C7. (Claimant Exhibit 1).
15. On January 5, 2012, Claimant's neurologist provided a written statement that Claimant continues to have pain in his neck and is unable to turn or twist his neck. He continues to be unable to work because of this pain and potentially will need surgery to correct this. (Claimant Exhibit 2).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment, or combination of impairments, does not significantly limit physical or mental ability to do basic work activities, it is not a severe

impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands

of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

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 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). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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).

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).

Based on Finding of Fact #7-#15 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his spinal impairments meet or equal Listing 1.04(A):

1.04 *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 equine) or the spinal cord. With:

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in deciding at application claimant was not disabled for potential MA/SDA eligibility purposes.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and processing to determine whether claimant met all of the other financial and non-financial eligibility factors necessary to qualify for assistance under his April 5, 2011, MA/SDA application.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/5/12

Date Mailed: 3/5/12

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.

VLA/ds

