

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: 2007-22035

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 4, 2007

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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, an in-person hearing was held on December 4, 2007. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has established disability for purposes of Medical Assistance (MA).

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 September 14, 2006, claimant applied for MA and retroactive MA. Claimant submitted medical records for department consideration.

(2) January 26, 2007, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) February 22, 2007, the department sent claimant written notice that his application was denied.

(4) May 15, 2007, the department received claimant's timely request for hearing.

(5) August 13, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) December 4, 2007, the in-person hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. The record was not sufficient for a determination and the Administrative Law Judge issued an Interim Order requesting an independent exam. July 15, 2008, after examination of all medical evidence the SHRT again denied claimant's application. SHRT Decision, 7-15-08. On or about July 30, 2008, the Administrative Law Judge found good cause to reopen the record due to submission of additional medical evidence. August 21, 2008, after review of all old and new medical evidence, the SHRT denied claimant's application for a third time. SHRT Decision 8-21-08.

(7) Claimant asserts disability based on impairments caused by CVA, heart disease, COPD, headache, asthma, arthritis, depression, poor vision, poor balance, and dizziness.

(8) Claimant testified at hearing. Claimant is 43 years old, 6'1" tall, and weighs 280 pounds. Claimant completed 11th grade and a GED. Claimant is able to read, write, and perform basic math. Claimant has a driver's license but does not drive as he needs glasses. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been doing construction work, welding and metal fabricating, factory work, managing a restaurant pantry, and as a transportation aide for a school system.

(10) May 5, 2008, claimant underwent an independent psychological assessment and a narrative report was prepared. AXIS I diagnosis is recurrent episode of major depression.

Claimant is oriented x 3. Memory, fund of knowledge, calculation, and abstract thinking appear within normal limits. Claimant reported history of drug and alcohol abuse. Claimant complains of depression and suicidal feelings as recently as the past few days with an attempted overdose in 2006. Second suicide attempt is reported to have occurred in 2003 or 2004. Claimant Exhibit A, Report, May 8, 2008.

(11) April 11, 2008, claimant underwent an independent medical evaluation and a report was prepared. In pertinent part, the report indicates that claimant is able to move independently and transfer off and on to the exam table. He ambulates using a standard cane in the right hand. He has normal muscle bulk and tone throughout the upper and lower extremities. Cranial nerves 2-12 are intact. Speech is normal. Mental status is normal. Mental status is intact to formal testing. Claimant has give-way weakness in the right upper and right lower extremities. Strength in the left upper and lower extremities are normal. Muscle stretch reflexes are normal and symmetric throughout. Hoffman sign is negative bilaterally. Plantar responses are flexor bilaterally. Claimant is not able to tandem walk. Claimant falls backward with Romberg testing. Doctor indicates he did not view any diagnostic studies. Doctor's assessment is that claimant has objective impairments of impaired balance and gait disturbance which could be consistent with prior cerebral vascular accident. There is no evidence of hemiparesis or speech disturbance. There is no evidence of hyperreflexia as would be expected following CVA. Claimant A, Report, 4-11-08.

(12) April 18, 2007, claimant underwent left heart catheterization and coronary angiography. A report indicates the following angiographic findings: right coronary artery arises from the right coronary cusp in normal fashion. The stent in the proximal right coronary artery is patent with mild in-stent restenosis. Distal right coronary artery has mild luminal irregularities. It

gives rise to posterior left ventricular branch and posterior descending artery branch, and it supplies large area the inferoposterior wall (dominant vessel). No angiographically obstruction lesions noted in the main right coronary artery. The right conus branch off the right coronary artery has an ostial 90 percent stenosis at the site of the stent, which was unchanged. The conus is a relatively small vessel. The left main arises from the left coronary cusp in normal fashion. It has mild luminal irregularities with no obstructive lesions. It divides into left anterior descending and a sizable ramus intermedius branch in a diminutive left circumflex, which supplies a small obtuse marginal branch and tapers in the AV groove. Circumflex and the ramus branch are angiographically unremarkable. The left anterior descending has minimal luminal irregularities with no obstructive lesions. It supplies anterior wall apex and wraps around it to supply the distal inferior wall. The opening aortic pressure was 100/60 and left ventricular end-diastolic pressure was 8 mm HG. There was no gradient upon pullback. Claimant Exhibit A, Report, 4-18-07.

(13) January 17, 2008, claimant's internist completed a Medical Examination Report (DHS-49) following examination that took place on January 11, 2008. Doctor indicates diagnoses of CVA, hypertension, coronary artery disease, COPD, CKD, GERD, and chronic pain. Doctor indicates a normal physical exam with the following exception: respiratory wheezes bilaterally; 60 percent ejection fraction; weakness and reduced range of motion on right; reduced coordination. Doctor opines that claimant's condition is deteriorating. Claimant is able to occasionally lift less than ten pounds, stand and/or walk less than two hours in an eight-hour day, and requires a cane to ambulate. Doctor indicates these restrictions are due to impairments caused by stroke and COPD. Claimant A, Medical Exam Report, 1-17-08. March 21, 2007, claimant's internist completed a second Medical Examination Report (DHS-49) following physical examination that took place on February 21, 2007. Doctor indicates that diagnoses of

right-sided weakness secondary to CVA, severe COPD, coronary artery disease, depression, hypertension, high cholesterol, and GERD. Doctor indicates the following abnormalities in his physical exam: patient ambulates with cane; reduced visual acuity; reduced right-sided grip strength; reduced right-sided strength. Doctor opines that claimant is able to occasionally lift less than ten pounds, sit for about six hours in an eight-hour day, and perform repetitive actions with his left upper extremity. Claimant Exhibit A, Report, 3-21-07.

(14) August 8, 2007, claimant was examined by his pulmonologist. Treatment notes were prepared that indicate claimant reports shortness of breath mostly with increased activity as well as when he was inhaling smoke or fumes. Pulse oxymetry is 97 percent. Lungs are clear. Heart is regular. Abdomen is soft. Doctor indicates opinion that claimant has severe chronic obstructive pulmonary disease with obstructive sleep apnea. Claimant Exhibit A, Treatment Notes, 10-8-07.

(15) March 9, 2007, claimant underwent a sleep study test and a report was prepared that indicates the following impression: severe obstructive sleep apnea and hypotheima in the supine and right lateral position associated with hypotheima and interrupted sleep; C-PAC was started the same night because of the severe findings and C-PAC of 12 was quite effective to improving the apnea and hypotheima and maintaining adequate oxygenation. Claimant Exhibit A, Report, 3-9-07.

(16) March 13, 2007, claimant underwent a esophagogastroduodenoscopy with biopsy. Postoperative diagnoses were mild gastroesophageal reflux disease; small hiatal hernia; and duodena polyp. Claimant Exhibit A, Report, 3-13-07.

(17) July 27, 2006, claimant underwent an MRA and MRI of the brain. A report was prepared that states the following impression: no acute infarct bleed or mass lesions; old

ischemic changes in the left posterior parietal subcortical white matter with area of loess without any enhancement; MR angiographic demonstrates markedly severe stenosis of the posterior horizontal cavernous segment of the left internal carotid artery and the circle of Willis is incomplete. Department Exhibit A, pg 62. August 15, 2006, hospital treatment records indicate claimant has stage 2 chronic kidney disease probably secondary to nephrosclerosis. Department Exhibit A, pg 69B.

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).

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

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 do 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).

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record establishes that claimant has right-sided weakness secondary to CVA. Claimant ambulates with a cane and has poor balance. Claimant has reduced right-sided grip strength and reduced right-sided strength. Claimant's physician and pulmonary specialist indicate that claimant has severe COPD with respiratory wheezes bilaterally. The objective medical evidence of record indicates that claimant has undergone heart catheterization and coronary angiography. The results appear to be within

normal limits. Independent physiological assessment revealed claimant has recurrent episode of major depression with suicide ideation and history of drug and alcohol abuse. The record does not indicate that claimant's depression is of long duration so as to meet the requirements of the federal statute. Finding of Fact 10-17.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has severe physical impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is not disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not meet or equal any Social Security Listing.

At Step 4, claimant's past relevant employment has been doing construction work, welding and metal fabricating, factory work, managing a restaurant pantry, and as a transportation aide for a school system. See discussion at Step 2 above. Finding of Fact 9-17.

At Step 4, the medical evidence of record is sufficient to establish that claimant has physical functional impairments that prevent him, for a period of 12 months or more, from engaging in a full range of duties required by his past relevant employment. Therefore, claimant is not disqualified from receiving disability at Step 4.

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. 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).

Medium work. 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. 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).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-17.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant does not retain the residual functional capacity to perform work activities. Therefore, claimant is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant meets the disability requirements to qualify for Medical Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for Medical Assistance.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate an evaluation of claimant's financial eligibility for Medical Assistance effective the earliest appropriate retroactive month prior to the application month of September 14, 2006. If otherwise eligible, medical review is set for October 2010. Claimant shall provide updated treatment records at review.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 26, 2009

Date Mailed: October 27, 2009

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.

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