

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: 2007-25304
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 7, 2008
Calhoun 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 February 7, 2008.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for 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 June 11, 2007, claimant applied for MA. Claimant submitted medical records for department consideration.

(2) July 23, 2007, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) July 25, 2007, the department sent claimant written notice that the application was denied.

(4) August 1, 2007, the department received claimant's timely request for hearing.

(5) November 1, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B. August 8, 2006, the Social Security Administration (SSA) wrote a letter that indicated claimant no longer receives SSI benefits due to excess income. Claimant Exhibit A. May 18, 2007, the SSA wrote a letter to the department regarding claimant stating that claimant was denied Social Security disability benefits due to being determined capable of substantial gainful activity. Department Exhibit D.

(6) February 7, 2008, the in-person hearing was held.

(7) Claimant asserts disability based on impairments caused by poor memory, bad back, and neck problems.

(8) Claimant testified at hearing. Claimant is 54 years old, 5'5" tall, and weighs 186 pounds. Claimant completed 11th grade and has a nurse technician's certificate. Claimant is able to read, write, and perform basic math. Claimant has a driver's license but does not drive due to apparent fainting spells.

(9) Claimant has no past relevant employment.

(10) July 7, 2007, claimant's orthopedic surgeon completed a Medical Examination Report (DHS-49) following examination that apparently took place January 3, 2007. Doctor indicates that claimant has a fractured tibia and tendonitis to the right wrist. Department Exhibit A, pgs 182-183. January 17, 2007, claimant was examined by another orthopedic specialist and treatment notes were prepared that indicate claimant is two weeks post op. She has some swelling and redness. Sutures were removed. Physical exam revealed ecchymosis to lower leg.

No warm or erythema. Department Exhibit A, pg 181. January 29, 2007, claimant visited an orthopedic physician complaining of pain to the right wrist. Apparently, claimant fell down the stairs several weeks prior. December 26, 2006, x-rays of the right wrist were normal. Physical exam revealed mild tenderness at the first dorsal compartment and mild wrist effusion. Active range of motion is 70 extension to 70 flexion. Patient is able to make a fist and extend fingers fully. Department Exhibit A, pg 180. April 18, 2007, claimant visited her physician complaining of pain to the right knee. Examination of her right knee reveals some swelling in the right ankle at the sight of the surgical incision. She has some swelling on the medial side of the right knee, with some tenderness to palpation of the right medial joint line. She has full range of motion in the knee, but some pain on full flexion. Claimant is walking with a cane today. Department Exhibit A, pg 201. May 30, 2007, claimant visited her physician. In pertinent part, treatment notes indicate claimant has persthetica meralgia of the right thigh. This is due to entrapment of the lateral foraminal cutaneous nerve underneath claimant's inguinal ligament and no treatment is needed other than weight loss. Department Exhibit A, pg 208.

(11) April 6, 2006, claimant underwent MRI of the cervical spine and a report was prepared that indicates the following impression: C4-5, C5-6, and C6-7 cervical spondylosis with C5, C6 and to the greatest degree C7 nerve root compression. Department Exhibit A, pg 216.

(12) July 5, 2007, claimant's family physician completed a Medical Examination Report (DHS-49) following physical examination on June 29, 2007. Doctor indicates current diagnoses of hypertension, chronic back pain, chronic neck pain, right leg pain, anxiety, and depression, and hypothyroidism. Claimant's blood pressure was 134/80. Doctor indicates a normal exam with the following exceptions claimant walks with a cane, antalgic gait with pain, right leg has 1+ edema, on an off tenderness in the paraspinus muscles of back and neck,

depressed mood. Doctor opines claimant's condition is stable. Claimant is occasionally able to lift 25 pounds. Claimant is able to sit about six hours in an eight-hour workday and stand and/or walk less than two hours in an eight-hour workday. Claimant is able to perform repetitive actions with both upper extremities and her left lower extremities. Doctor indicates no mental limitations. Department Exhibit A, pgs 289-290.

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 indicates that claimant has degenerative changes in her cervical spine. She is post fractured tibia. Claimant has hypertension. The objective medical evidence of record does not indicate that claimant has severe impairments due to these conditions. Claimant's family physician limits lifting to occasionally lifting 25 pounds. Physician limits sitting to less than two hours in an eight-hour workday. Finding of Fact 10-12.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe 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 disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law. Finding of Fact 5.

At Step 4, claimant has no past relevant employment. Accordingly, a Step 4 analysis cannot be completed.

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 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least light work activities. Considering claimant's vocational profile (closely approaching advanced age, limited education, and no work history) and relying on Vocational Rule 202.10, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/

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

Date Signed: December 4, 2009

Date Mailed: December 8, 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.

JAB/db

cc:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.