

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: 2007-30051

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2008

Clare 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 March 4, 2008. Claimant was represented by [REDACTED]

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 May 21, 2007, claimant applied for MA.
- (2) June 11, 2007, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

(3) July 17, 2007, the department sent claimant written notice that his application was denied.

(4) September 11, 2007, the department received claimant's timely request for hearing.

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

(6) March 4, 2008, the in-person hearing was held. Prior to the close of the record, the department and the claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. July 3, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 7-3-08.

(7) Claimant asserts disability based on impairments caused by hypertension, diabetes, sleep apnea, heart disease, leg and arm pain, fatigue, headaches, dizziness, and poor memory.

(8) Claimant testified at hearing. Claimant is 49 years old, 5'8" tall, and weighs 234 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license but is recommended by his physician not to drive. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been as a long haul truck driver, horse hauler, and corrections officer.

(10) March 9, 2007, claimant underwent cardiac catheterization due to unstable angina pectoris. Claimant then underwent multiple stent placement. Discharge notes indicate that claimant was released in significantly improved condition. It was recommended that claimant have his right coronary lesions stented electively and undergo an echocardiogram in six to eight

weeks. Claimant's commercial driver's license is restricted until further assessment. Surgeon recommends claimant do cardiac rehabilitation including weight loss and discontinue smoking. Claimant Exhibit A, Reports, 3-9-07—3-11-07. March 24, 2007, claimant was admitted to hospital and underwent cardiac testing that revealed moderate to severe left ventricular systolic function reduction with an ejection fraction of 25% to 30%. EKG revealed old anterior infarction with no acute ST-T changes. Claimant was released on March 27, 2007, with plans to insert a stent four to six weeks in the future. Department Exhibit A, pgs 53-63.

(11) April 18, 2007, claimant was examined by his physician and treatment records were prepared. Past medical history is indicated as positive for Hepatitis A, recent MI, placement of six stents both in the LAD and the right coronary artery, COPD, and two heart catheterizations. Physical exam revealed frequent cough in a three pack per day smoker; lungs have prolonged expiratory phase, rare end respiratory wheezes in the bases but no adventitial sounds; heart has regular rate and rhythm without murmurs, no S3 S4 rubs or clicks (doctor notes that cardiac catheterization revealed a 70% narrowing of the right coronary artery and that is why patient required treatment. Other heart arteries do not reveal any significant obstructive disease so apparently the stents placed in the LAD are working and are keeping the arteries open). Abdomen is protuberant and soft, groin area where heart catheters were performed is healed and there is no swelling or induration, no appearance of infection; no obvious organomegaly, masses, tenderness or peritoneal signs; extremities are warm without edema and no cyanosis or clubbing; cranial nerves 2-12 are grossly intact; Babinski's are downgoing, sensory and motor are intact. Doctor indicates diagnoses of heart disease with multiple stent placement; recent diagnosis of diabetes mellitus type 2; hypertension; three episodes of visual disturbance with blind spots, possible emboli to the eyes; hypercholesterolemia; mild nocturia; insomnia secondary to restless

leg syndrome; early diabetic neuropathy; and probably BPH-patient. Claimant Exhibit A, Treatment Record, 4-18-07.

(12) September 26, 2007, claimant was admitted to hospital complaining of chest pain. Claimant underwent stress testing that revealed a small area of ischemia and the apical wall, and a small infarct anteriorly. Cardiac catheterization revealed no target lesions to interfere upon. Claimant was discharged September 28, 2007. Claimant Exhibit A, Reports, September 26-28, 2007.

(13) November 27, 2007, claimant's physician completed a Medical Examination Report (DHS-49) following physical exam that same day. Doctor indicates diagnosis of diabetes mellitus, hyperlipidemia, angina, C-spine/L-spine dysfunction. Doctor indicates a normal physical examination with the exception of obesity and a blood pressure of 126/74. Doctor indicates claimant is occasionally able to lift ten pounds and able to perform a full range of repetitive actions with both upper extremities. Doctor opines claimant is unable to sit and/or stand greater than 15 minutes at a time, however, the reasons for this restriction are unclear with the exception of cardiac stent, hypertension, hyperlipidemia, angina, and diabetes mellitus type 2. Doctor also indicates that claimant has short and long term memory loss. Department Exhibit A, Medical Exam Report, 11-27-07. April 12, 2007, claimant underwent a cardiovascular stress test that revealed the test to be indeterminate exercise electrocardiogram to 7 METS with no significant changes from baseline abnormalities in an individual who has below average level of exercise tolerant for age. Doctor comments claimant's condition is stable. Department Exhibit A, pg 66.

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 heart disease and has undergone multiple heart catheterizations and stent placements. Claimant first had surgery on or about March 2007 and again in April 2007. Claimant was admitted to hospital in September 2007 and was found to have chest pain and a small area of ischemia in the apical wall and a small infarct anteriorly. Cardiac catheterization revealed no target lesions to intervene upon. Claimant's chest pain resolved and he was released from hospital after approximately four days. The objective medical evidence of record indicates that claimant has hypertension and diabetes. The record does not indicate claimant has severe impairments due to these conditions. The record indicates that claimant has poor memory; however, the record contains no objective psychological assessment reports or treatment records for cognitive impairments. Claimant's family physician indicates claimant is unable to stand/walk greater than

15 minutes at a time. The reason for this severe limitation is unclear. The cardiac records do not indicate these severe restrictions. Accordingly, the family physician's opinion must be given less legal weight. Finding of Fact 10-13.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe physical and/or cognitive 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.

At Step 4, claimant's past relevant employment has been as a long haul trucker, horse hauler, and corrections officer. See discussion at Step 2 above. The objective medical evidence of record appears to indicate that claimant would be unlikely to be able to safely perform the strenuous duties required by his past relevant employment. Finding of Fact 9-13.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's 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 discussions at Step 2 and 4 above. Finding of Fact 9-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities. Considering claimant's Vocational Profile (younger individual, high school graduate or more, and history of

semi-skilled work, skills not transferable) and relying on Vocational Rule 202.21, 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.

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