

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: 2007-12684
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 10, 2007
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Jana B. 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 July 10, 2007. Claimant was represented [REDACTED]

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not 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) June 12, 2006, claimant applied for MA and retro-active MA. Claimant submitted medical records for department consideration.
- (2) January 30, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) February 7, 2007, the department sent claimant written notice that the application was denied.

(4) February 20, 2007, the department received claimant's timely request for hearing.

(5) May 25, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) July 10, 2007, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. September 18, 2007, the SHRT again denied claimant's application. SHRT Decision, 9/18/07.

(7) Prior to the close of the record, the Administrative Law Judge was informed that the department approved claimant's application effective May 2007. Thus, the months March 2006 through April 2007 are at issue in this hearing.

(8) Claimant asserts disability based on impairments caused by tachycardia, rheumatoid arthritis, peripheral vascular disease, and hepatitis C.

(9) Claimant testified at hearing. [REDACTED]

[REDACTED]

[REDACTED]

(10) Claimant's past relevant employment has been substance abuse counselor and social worker.

(11) May 7, 2006, claimant was admitted to hospital for treatment of pneumonia. Secondary diagnoses were viral hepatitis c, acute respiratory failure, electrolyte and fluid disorder, septicemia, systemic inflammatory response system with organ dysfunction, hypertensive heart disease, diastolic heart failure, congestive heart failure, urinary tract infection, pulmonary collapse, dehydration, vascular insufficiency of intestine, rheumatoid arthritis, cardiac dysarrhythmia,

constipation, long-term use of steroids, abnormal blood chemistry, malabsorption, diabetes mellitus, effusion of joint, anemia, tobacco use, difficulty in walking, goiter, coronary atherosclerosis, and mononeuritis. Claimant was treated with blood transfusions, medication, and surgery. She showed slow clinical improvement with persistent anemia. On May 30, 2006, claimant was transferred to a rehab facility. Department A, pages 96-97.

(12) October 3, 2006, claimant underwent pulmonary function testing that revealed no evidence of any significant obstructive or restrictive lung disease. Department A, pages 124-126.

(13) December 21, 2006, claimant underwent an independent physical examination. A report was prepared that states, in pertinent part: Claimant's heart rate was 158, heart rate and rhythm are regular; there is an enlarged thyroid; straight leg raises are positive at 50 degrees with extreme pain in back of legs, deep tendon reflexes are equivocal, peripheral pulses are present, no edema, cyanosis, or jaundice. Doctor indicates diagnoses of supraventricular tachyarrhythmia, enlarged thyroid, depression, and hepatitis C. Department A, pages 101-103.

(14) December 28, 2006, claimant underwent x-ray of the abdomen which revealed nonspecific view of abdomen with retained bowel content. Department A, page 113. Claimant underwent barium enema on December 29, 2006 after which she had rectal pain and bleeding. Department A, page 108.

(15) February 1, 2007, claimant underwent a colonoscopy which revealed rectal bleeding, chronic constipation, anal irritation, tiny hyperplastic appearing polyp at 15 cm. Department A, pages 153-154.

(16) April 11, 2007, claimant underwent cardiac testing that revealed a normal gated myoview scan and resting tachycardia that persisted throughout the stress test and nonspecific resting T-wave changes. The prepared report states probability of significant coronary artery disease is felt to be low based on the test results. Department A, pages 174-175.

(17) May 14, 2007, claimant underwent medical testing on her lower extremities that revealed abnormal bilateral ankle brachial indices bilaterally suggestive of hemodynamically significant peripheral vascular disease. Department A, page 171.

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 was admitted to hospital in May 2006 for treatment of pneumonia and other severe health conditions, including vascular insufficiency of the intestine, rheumatoid arthritis, heart dysarrhythmia, abnormal blood chemistry, goiter, anemia, and coronary atherosclerosis. Claimant was treated with blood transfusions, medication, and surgery. She was released to a rehab facility on May 30, 2006. Finding of Fact 11. In December 2006, claimant underwent an independent physical examination that revealed claimant to have supraventricular tachyarrhythmia with a heart rate of 158, extreme pain at back of legs with straight leg raise at 50 degrees, enlarged thyroid, depression, and hepatitis C. Finding of Fact 13. In April 2007, objective medical testing revealed claimant to have resting tachycardia that persisted throughout the stress test. Finding of Fact 16. In

May 2007, objective medical testing revealed hemodynamically significant peripheral vascular disease. Finding of Fact 17.

At Step 2, the objective medical evidence of record is 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 not disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not meet any social security listing.

At Step 4, claimant's past relevant employment has been as substance abuse counselor and social worker. The objective medical evidence of record indicates that claimant suffers from a combination of impairments, including hemodynamically significant peripheral artery disease and persistent tachycardia/tachyarrhythmia. See discussion at Step 2, above. Finding of Fact 11-17.

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, the objective medical evidence of record indicates that claimant has hemodynamically significant peripheral artery disease and persistent arrhythmia/tachyarrhythmia. See discussion at Step 2 and 4, 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 purposes of Medical Assistance effective the earliest retroactive month of application.

Accordingly, the department's action is HEREBY REVERSED. The department is to initiate a financial determination of claimant's eligibility for MA in compliance with department policy and this decision and order. Medical review is as set by the Medical Review Team or if none has been set, medical review is November 2009.

/s/

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

Date Signed: January 5, 2009

Date Mailed: January 6, 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.

JBB

