

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: 2007-21200

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 did not appear. Claimant was represented by [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) September 26, 2006, claimant applied for 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 6, 2007, the department sent claimant written notice that the application was denied.

(4) April 27, 2007, the department received claimant's timely request for hearing.

(5) July 20, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) December 4, 2007, the in-person hearing was held. Prior to the close of the record, claimant's representative submitted additional medical evidence. Representative waived the right to a timely hearing decision. January 25, 2008, after review of medical evidence, the SHRT again denied claimant's application. SHRT Decision, 1/25/08.

(7) Claimant asserts disability based on impairments caused by pulmonary embolism, renal failure, hypertension, heart disease, and CVA.

(8) Claimant testified at hearing. As of December 2006, claimant is 46 years old, 5'9" tall, and weighs 213 pounds. Education and other vital statistics are not known. Claimant is currently incarcerated.

(9) No evidence was presented to establish claimant's past relevant employment.

(10) May 14, 2006, claimant was admitted to hospital with syncope, multiple substance abuse, previous myocardial infarction, and respiratory failure. Objective medical testing revealed pneumonia, non-ST myocardial infarction, gastrointestinal bleed, cardiac arrhythmia, complicated by VT. 5, noncompliance with medications, and renal failure. Claimant was treated with medication and dialysis. Department A, pages 253-256. June 2, 2006, claimant was admitted to hospital. Impression on admission was acute pulmonary embolism,

hypertension, and end stage renal disease with history of stroke. Claimant was treated with medication, his condition improved, and he was released on June 13, 2006. Discharge diagnoses were pulmonary embolism, end stage renal disease, and hypertension. Department A, page 8-9. On or about August 6, 2006, claimant was admitted to hospital complaining of chest pain, tremors, and palpitations. Claimant reported history of alcohol and drug abuse. Department A, pages 10-12. On or about October 12, 2006, claimant was admitted to hospital with heart palpitations. Objective medical testing revealed single vessel coronary artery disease with proximal left anterior descending artery stenosis, which is hazy by coronary angiography and hemodynamically significant soft eccentric echolucent plaque in the proximal left anterior descending artery with a cross-sectional area stenosis of 70% to 75%; intravascular ultrasound of the left anterior descending artery shows soft eccentric echolucent plaque in the proximal to mid left anterior descending artery and mild atherosclerotic plaque in the left main coronary artery; cross sectional stenosis of 70% to 76%; successful percutaneous transluminal coronary angioplasty and stenting of the left anterior descending artery with 3.5 x 16mm taxus drug-eluting stent, which reduced initial stenosis of 70% to 80% to less than 0% TIMI III flow. No angiographic evidence of coronary dissection. Department A, pages 1-3, 99-101. Discharge diagnosis was acute coronary syndrome, myocardial infarction ruled out. Secondary diagnoses were hypertension, bipolar disorder, history of pulmonary embolism, chronic kidney disease. Department A, pages 68-69. On or about November 11, 2006, claimant presented to hospital complaining of chest pain and vomiting. Department A, Reports, 11/12/06. December 13, 2006, claimant underwent cardiac testing that revealed no perfusion abnormality of the left ventricular myocardium was demonstrated on the gated spect images obtained

following pharmacological stress with intravenous Persantine followed by exercise with hand weights; left ventricular ejection fraction is calculated to be 46%. Report, 12/13/06.

(11) January 27, 2007, claimant underwent an independent physical exam and a report was prepared. Physical exam revealed breath sounds clear to auscultation and symmetrical, no accessory muscle use; heart has regular rate and rhythm without enlargement, normal S1 and S2; abdomen has no organomegaly or masses, bowel sounds are positive; no clubbing, cyanosis, or edema is detected; peripheral pulses are intact; no evidence of joint laxity, crepitation, or effusion, grip strength remains intact, dexterity is not impaired, patient had mild difficulty getting on and off the exam table, and moderate difficulty heel and toe walking, range of motion of the joints is full; cranial nerves are intact, motor strength seemed fine, subjective sensory deficits in feet and hands, reflexes are intact and symmetrical, Romberg is negative, patient walks with a mild left sided limp without use of cane. Department A, pages 22-25.

(12) December 12, 2006, claimant underwent independent intellectual function testing exam and a report was prepared. Tester opined claimant did not give adequate effort to test and so results may not be valid. Verbal IQ was 68, Performance IQ is 74, and Full Scale was 68. Report, 12/12/06.

(13) November 22, 2006, claimant underwent independent psychological testing and a report was prepared. AXIS I diagnoses were cognitive disorder and alcohol related disorder with psychotic features. The report indicates that claimant reported a long history of alcohol abuse and heroin use. Claimant did not give good effort during exam and claimant failed to provide detailed responses to examiners questions. Doctor opined that chronic alcoholism has further impaired a man already limited as to cognitive capabilities, a condition which is permanent and untreatable. Report, 11/22/06. December 12, 2006, a psychologist opined that claimant was

moderately limited in 5 of 20 areas of functioning. Doctor opined that claimant has cognitive disorder that would restrict him to simple, routine, unskilled work involving 1,2,or 3 step instructions with limited need for sustained concentration, no contact with public, and no more than occasional changes in the work setting. Department A, Report, 12/12/06.

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 cardiac stent placement. Objective medical testing revealed left ventricular ejection fraction of 46%. May 2006 record indicates claimant was to undergo dialysis. Later records do not indicate claimant is in need of this procedure. Objective medical testing revealed possible cognitive impairment; however, examiner believed claimant did not give full effort and the results were possibly not reliable. Another mental health professional

opined claimant was restricted in his interaction with public, ability to follow instructions and sustain concentration. Claimant reported history of alcohol and drug abuse. The record is not clear as to the impact these issues have on claimant's cognitive functioning. Finding of Fact 10-13. Materiality of drug and alcohol abuse is cited.

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.

At Step 4, claimant's past relevant employment is not known. Accordingly, a Step 4 analysis can not be performed.

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 heart disease, end stage renal disease, cognitive disorder, and polysubstance abuse. See discussion at Step 2, above. Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least simple, light activities. Considering claimant's Vocational Profile (younger individual, education not known, work history not known) and relying on Vocational Rule 202.17, 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 to deny claimant's MA is HEREBY UPHELD.

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

Date Signed: September 29, 2009

Date Mailed: September 30, 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

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