

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: 2007-23021
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 23, 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 October 23, 2007. 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 27, 2006, claimant applied for MA and retro-active MA. Claimant submitted medical records for department consideration.

(2) February 2, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) February 9, 2007, the department sent claimant written notice that the application was denied.

(4) May 9, 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 B.

(6) October 23, 2007, the in-person hearing was held. Prior to the close of the record, claimant submitted new medical evidence. Claimant waived the right to a timely hearing decision. An interim order was issued to obtain an eye exam, psychiatry exam and psychological assessment. March 13, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 3/13/08.

(7) Claimant asserts disability based on impairments caused by COPD, hypertension, knee replacement, injuries to hips, back, and shoulders, and stroke.

(8) Claimant testified at hearing. Claimant is 47 years old, 5' 10" tall, and weighs 220 pounds. Claimant completed 10th grade and is able to read, write, and perform basic math. Claimant has a driver's license but does not drive. He cares for his needs at home.

(9) Claimant's past relevant employment has been as a diesel mechanic, auto painter, and in construction.

(10) October 25, 2006, claimant's orthopedic physician completed a Medical Examination Report (DHS-49) following physical exam and x-rays that took place on March 29, 2006. Doctor indicates claimant is post total left knee arthroplasty. Doctor notes that

prosthesis has good alignment and zero loosening. Ligaments are stable. Claimant has full extension, midline patella, good quad and good hamstring. Department A, pages 22-23.

(11) June 7, 2006 to June 12, 2006, claimant was treated at hospital post motor vehicle accident. Objective medical testing revealed nondisplaced and slightly displaced fractures of the right middle ribs with small associated pneumothorax along the anterior aspect of the right lower thorax, as well as small intraparenchymal hematoma of the liver on the lateral aspect adjacent to the rib fractures. Department A, pages 40-52.

(12) November 29, 2007, claimant underwent an independent physical exam. A report was prepared that states doctor's impression of complaints of bilateral lower extremity pain, some limitations of gait, and extreme limitation in range of motion of left knee. Physical exam revealed antalgic gait pattern. Claimant is able to get on toes and heels, but seems a bit weak on left compared to right. Muscle stretch reflexes were diminished at patellae and Achilles bilaterally. There are well-healed incisions laterally in both femurs and over the anterior aspect of the left knee. Left knee has reduced range of motion -10 of extension and 50 degrees of flexion. Claimant has normal strength in left lower extremity with knee extension, knee flexion, and normal dorsiflexion. Claimant reports diminished sensation to pinprick in the entire left lower extremity compared to right. Report, November 29, 2007.

(13) January 17, 2008, claimant underwent physical exam and functional assessment. A narrative report was prepared that states a normal physical exam with the exception of slightly diminished breath sounds, slight in-coordination, weakness, and reduced light touch sensation in the right upper extremity. Claimant has bony enlargement of the left knee. Grip was 28kg on right and 42 kg on left. Claimant was able to pick up coins with both hands. Doctor opines that claimant is able to perform a full range of orthopedic maneuvers with the exception of stooping

and squat/arise from squat. Reflexes are absent in left and right brachial radialis, ulnar, and Hoffman's. Reflexes are absent in patella, Achilles, and Babinski bilaterally. Claimant has straight leg range of motion supine of 80 degrees left and 60 degrees right. Straight leg range of motion seated is 90 degrees left and 80 degrees right. Cervical spine has reduced range of motion in all areas by 10 degrees to 15 degrees. Lumbar spine range of motion is reduced by 10 degrees to 20 degrees. Hip range of motion is reduced by 10 degrees to 20 degrees on left and is normal on right. Left knee flexion is reduced by 60 degrees. Right knee flexion is reduced by 25 degrees. All other joints have normal range of motion. Doctor notes history of multiple fractures of femurs, left hip and both upper arms, with persistent pain. He is status post left knee replacement with persistent pain. He has chronic neck and low back pain and history of stroke that resulted in residual blindness of the right eye. Report, January 17, 2008.

(14) December 3, 2007, claimant underwent an independent eye examination. A report was prepared that indicates claimant has cataracts in both eyes. He has no confrontational vision in his right eye and Hollenhurst plaque on the side of the optic nerve head in the superior bifurcation. Claimant's best corrected vision in left eye is 20/20 and 4 feet in right eye. Diagnoses are central retinal artery occlusion in both eyes, cataracts in both eyes, and hypertension. Report, December 3, 2007.

(15) December 17, 2007, claimant underwent an independent psychological exam. A narrative report was prepared that states AXIS I diagnoses of reactive depression secondary to job loss. Claimant was oriented X3 and had adequate judgment, fund of knowledge, abstraction, and calculation. Report, December 17, 2007.

(16) December 26, 2006, claimant underwent pulmonary function testing. A report was prepared that states pre-medication FVC of 3.38, 3.38, and 3.89. Pre-medication FEV1 was 2.07, 2.36, and 2.93. Post-medication FVC was 3.53, 3.85, and 3.85. Post-medication FEV1 was 2.46, 2.82, and 2.82. Report, 12/26/06.

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 is post left knee replacement and motor vehicle accidents. He is slightly weaker in his lower left extremity compared to right with reduced range of motion in the left knee. He is able to get on toes and heels. Claimant has slight in-coordination, weakness, and diminished sensation to light touch in his right upper extremity. Grip strength on left is 28kg compared to 42kg on right. Claimant is right handed. Claimant is able to pick up a coin with each hand. Claimant has slight to moderate

reduced range of motion in many joints. Claimant is post-central retinal arterial occlusion (CRAO) that resulted in loss of central vision in right eye. He has Hollenhurst plaque in both eyes. Claimant's best corrected vision on left is 20/20. Claimant has hypertension that contributed to the CRAO. Claimant reports lumbar pain. Psychiatric testing revealed claimant has reactive depression, is oriented X3 and has adequate judgment, abstraction, calculation, and fund of knowledge. Pulmonary function testing revealed pulmonary function in excess of that which is considered to be disabling. Finding of Fact 10-16; Listing 3.02 A, B. It is noted that claimant's family physician opined in October 2007 that claimant was not able to lift weight, unable to stand, walk, sit during a work day, unable to operate foot and leg controls with either lower extremity, and unable to perform most repetitive actions with his upper extremities. Doctor cites hospital records in support of his opinions. Medical Examination Report, 10/19/07. Doctor's opinions are not consistent with the objective functional assessments of record and so will be given less legal weight.

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 has been as diesel mechanic, auto painter, and in construction. Claimant is post-left knee replacement and has reduced range of motion, slight weakness, and pain in his left knee. Claimant has diminished sensation to light touch, weakness, and slight in-coordination in his right upper extremity. Grip strength is reduced in left

upper extremity. Claimant is post-CRAO that resulted in loss of central vision in right eye. Claimant's best corrected left vision is 20/20. See discussion at Step 2, above. Finding of Fact 9-16.

At Step 4, claimant's past relevant employment normally requires squatting and rising from a squat and considerable upper body strength. 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 reduced range of motion in his left lower extremity. He has slight in-coordination, weakness, and reduced sensation to light touch in his right upper extremity. He reports lumbar pain and pain in his lower extremities. He is able to get on heels and toes. He is able to pick up a coin with either hand. He has no central vision in his right eye. Left eye has best corrected vision of 20/20. See discussion at Step 2, above. Finding of Fact 10-16.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least sedentary work activities. Considering claimant's Vocational Profile (limited education, history of skilled and semi-skilled work, and younger individual) and relying on Vocational Rule 201.19, 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: June 21, 2009

Date Mailed: June 22, 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: 