

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: 2007-30726

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 19, 2008

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 March 19, 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 November 28, 2006, claimant applied for MA.
- (2) June 6, 2007, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

(3) June 12, 2007, the department sent claimant written notice that the application was denied. Department Exhibit C.

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

(5) December 14, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) March 19, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by heart disease, obesity, fibromyalgia, COPD, hypertension, sleep apnea, depression and lupus.

(8) Claimant did not appear at hearing.

(9) Claimant's past relevant employment is not known.

(10) July 11, 2007, claimant was examined by a cardiologist. Treatment notes were prepared that indicates claimant's list of problems are as follows: coronary atherosclerotic heart disease; severe multi-vessel coronary artery disease and hemodynamically significant left main coronary artery stenosis by cardiac cath; status post four vessel coronary artery bypass surgery November 2006; status post left pleural effusion and thoracentesis; history of cerebral vascular accident with left sided symptoms; history of bronchitis; systemic arterial hypertension; tobacco use; obesity; history of polysubstance abuse, remote; history of lupus; status post 2-D echocardiogram with normal left ventricular size and mild systolic dysfunction. Estimated ejection fraction of 50% with moderate septal thickening and diastolic dysfunction for echocardiogram done December 1, 2006. Physical exam revealed claimant to be oriented x 3. Blood pressure was 120/90. Pupils are equal and reactive to light. Range of extraocular muscles intact. Sclera is white. Thyroid is not palpable. Neck is supple. There is no jugular venous distension. No carotid bruit. Examination of the heart shows apex beat in the fifth intercostal

space. No heave, thrill, or palpable S3 is noted. No S4. S1 and S2 are well heard and normally split. No rubs or clicks. Abdominal aorta is not palpable. The dorsalis pedis and posterior tibial pulses are 1-1+ bilaterally. There is no evidence of varicose veins or ulcers. There is an absent left radial pulse. Cranial nerves are grossly intact. Motor and sensory systems are grossly intact. Skin does not show any rashes. Lymph nodes are not palpable. EKG reveals normal sinus rhythm. Ventricular rate is 90 per minute. There is a normal axis. There is 4 R wave progression. No other acute ST-T wave changes. Claimant Exhibit A, Report, 7-11-07. February 6, 2007, claimant underwent an exercise stress test that revealed normal resting AVI of 1.03 and immediate post exercise of 0.82 on the right side and normal resting AVI of 1.10 and immediate post exercise of 0.98 on the left side consistent with mild peripheral arterial occlusive disease on the right side and normal flow pattern on the left side. Arterial Doppler wave form and volume plethysmography (VP) consistent with mild peripheral arterial occlusive disease on the right and normal flow pattern on the left. Claimant Exhibit A, Report, 2-6-07.

(11) November 20, 2006, claimant's cardiologist wrote a letter to claimant's family physician indicating claimant underwent coronary artery bypass graft x 3 on October 31, 2006. Patient had no significant complaint other than soreness in the chest. Chest incision is healing well without evidence of infection. Lungs are clear. She is improving slowly from surgery. She had a longer post operative recovery because of her history of smoking and pneumonia post operative. Claimant Exhibit A, Letter, 11-20-06. November 2, 2006, claimant underwent a chest x-ray that revealed persistent congestive heart failure. Claimant Exhibit A, Report, 11-2-06. November 10, 2006, claimant underwent chest x-ray that revealed the heart is enlarged; there is subsegmental atelectasis and/or effusion seen at both lung bases which in doctor's opinion have improved slightly. There is a right internal jugular sheath. Claimant Exhibit A, Report, 11-10-06.

(12) May 10, 2007, claimant underwent pulmonary function tests that revealed FVC of 3.10 and 2.48. FEV 1 was 79.9. Claimant Exhibit A, Report, 5-10-07.

(13) February 5, 2007, claimant underwent an independent physical examination and a narrative report was prepared. Physical examination revealed neck was supple with no evidence of lymphadenopathy or thyromegaly. Carotids are bilaterally palpable with no bruit. Chest has increase in AP diameter. Scar is noted from previous thoracotomy. Breath sounds are distant. Heart sounds one and two are heard with no gallop or murmur. No JVD. No edema. Abdomen is soft with no masses. Cranial nerves 2-12 are intact. CNS exam otherwise mostly within normal limits. Smaller joints of the hands reveal some swelling and tenderness. Range of motion is normal at this time. Doctor's impression is: morbid obesity, systemic lupus erythematosus; coronary artery disease; CABGS; major depression; fibromyalgia; COPD secondary to previous cigarette smoking, moderately severe. Department Exhibit A, pgs 7-8.

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 underwent multiple heart bypass surgery in October 2006. She was determined to have congestive heart failure at that time. Claimant then suffered from pneumonia which slowly improved. Claimant has mild peripheral occlusive disease on the right lower extremity. Claimant has moderately COPD, lupus, and depression. Finding of Fact 10-13.

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 beginning October 2006. Therefore, claimant is not disqualified from receiving disability at Step 2 effective October 2006.

At Step 3, claimant's combination of impairments do not meet or equal any Social Security Listing.

At Step 4, claimant's past relevant employment is not known. 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 10-13.

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 effective October 2006. Therefore, claimant is disabled and 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 for Medical Assistance based on disability effective the earliest appropriate retroactive month prior to application month of November 2006.

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 Medical Assistance effective the earliest appropriate retroactive month prior to application month of November 2006.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's financial eligibility for Medical Assistance effective with the earliest appropriate retroactive month prior to claimant's month of application. No medical review is required as claimant currently receives disability benefits from the the Social Security Administration.

/s/

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

Date Signed: December 3, 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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