

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: 2007-8973
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 20, 2007
Ingham 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 [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) May 31, 2006, claimant applied for MA and retroactive MA. Claimant submitted medical records for department consideration.

(2) August 8, 2006, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) August 31, 2006, the department sent claimant written notice that the application was denied. Department C.

(4) November 21, 2006, the department received claimant's timely request for hearing.

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

(6) June 20, 2007, the in-person hearing was held. Prior to the close of the record, the claimant requested that the record be left open for additional medical evidence. Claimant waived his right to a timely hearing decision. October 19, 2007, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 10/19/07.

(7) Claimant asserts disability based on arthritis in his hips, right hip replacement in 2006, and depression.

(8) Claimant testified at hearing. [REDACTED]. Claimant completed a [REDACTED] and has taken many computer classes. He is able to read, write, and perform basic math. He has a driver's license and is able to drive. He cares for his needs at home.

(9) Claimant works full time as of December 2006 as a computer process developer. Past relevant employment was as an accountant and computer technician.

(10) August 15, 2005, claimant underwent a mental health evaluation. A narrative report was prepared that states, in pertinent part, that claimant is oriented x3 and alert; affect was friendly but somewhat anxious; suicidal thoughts with no plan. Claimant was observed to have difficulty ambulating and appeared to be in pain. AXIS I diagnosis was major depressive disorder, recurrent, moderate. GAF was assessed at 55. Claimant A, pages 7-11. In November 2005, claimant's mood was improved and he had no evidence of risk of harm to himself or

others. Claimant believed he responded well to medication and appropriately decided to extend the time between his appointments. Claimant A, pages 33-34. In January 2006, claimant was alert and oriented x3. He had stable mood and was coherent and focused. There was no indication of being a danger to himself and others. Claimant is considering discontinuing treatment. Department A, pages 37-38.

(11) October 2005, claimant was found to have severe arthritis in his hips bilaterally causing pain and difficulty ambulating. Claimant was not able to have surgery right away due to his obesity and the need to lose weight. Claimant A, page 41. On February 28, 2006, claimant was admitted to hospital for total right hip replacement. Prior to surgery, physical exam revealed significant pain in the right hip and marked restrictions in the range of motion. X-ray revealed severe degenerative arthritis in his right hip. On March 20, 2006, objective medical testing revealed that the total hip replacement had failed and claimant was scheduled for surgery. Department A, pages 1-23. Objective medical testing that took place on March 22, 2006 indicates a fully articulating right hip prosthesis. Claimant A, page 5. July 12, 2006, claimant's orthopedic surgeon opined that claimant was improving, but could not tolerate sit/stand/walk requirements of any type for 6 months. Department A, pages 24-25.

(12) Claimant returned to full time work effective December 2006.

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 engaged in substantial gainful activity and so is disqualified from receiving disability at Step 1. Finding of Fact 9, 12.

At Step 2, the objective medical evidence of record indicates that claimant underwent right hip replacement in February 2006 and additional surgery on the hip in March 2006. He was diagnosed with severe osteoarthritis of the hips bilaterally in October 2005, but surgery was delayed due to claimant's obesity and the need to lose weight prior to surgery. Finding of Fact 11. In August 2005 to January 2006, claimant's mental health professional observed that claimant had difficulty walking, used a cane, and appeared to be in pain. Finding of Fact 10. In July 2006, claimant's orthopedist recommended that claimant not sit/stand/walk for employment purposes until December 2006. Finding of Fact 11. The record contains no objective medical evidence to establish that claimant continued to have physical restrictions or limitations due to his right hip surgery effective December 2006. Department A; Claimant A.

At Step 2, claimant was treated for moderate depression from August 2005 to January 2006. Claimant was oriented x3 and alert for the duration of his treatment. He responded well to medication and his condition significantly improved. Finding of Fact 10.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant had severe impairments (severe osteoarthritis in his hips and hip joint replacement) that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more for the timeframe October 2005 through November 2006. Therefore, claimant is not disqualified from receiving disability at Step 2 effective the earliest retroactive month preceding his May 2006 application for MA and continuing through November 2006.

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 an accountant and computer technician. Beginning October 2005 through November 2006, claimant had severe pain in his hips and underwent two right hip replacement surgeries. He required an extensive recovery period ending in November 2006. He returned to work in December 2006. See discussion at Step 2, above. Finding of Fact 9-12.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant had functional impairments that prevented claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment effective with the earliest retroactive month preceding his May 2006 application for MA and continuing through November 2006. Therefore, claimant is not disqualified from receiving disability at Step 4 for the closed timeframe stated above.

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 had severe osteoarthritis in his hips bilaterally effective October 2005. February 2006, he underwent hip replacement surgery which failed. He underwent additional surgery in March 2006. Claimant was not able to return to work until December 2006. The record contains no objective evidence to establish claimant was disabled after November 2006. See discussion at Step 2, above.
Finding of Fact 10-12.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant did not retain the residual functional capacity to perform work activities effective with the earliest retroactive month of his May 2006 application for MA and continuing through November 2006. Therefore, claimant is not disqualified from receiving disability at Step 5 for the timeframe stated above.

Claimant does meet the federal statutory requirements to qualify for disability beginning with the earliest retroactive month of his May 2006 application for MA and continuing through November 2006. Claimant does not meet the federal statutory requirements to qualify for disability effective December 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 for the period beginning with the earliest retroactive month preceding claimant's May 2006 application for MA and continuing through the 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 MA effective the earliest retroactive month preceding the May 2006 application through November 2006 in compliance with department policy and this decision and order.

/s/ _____
Jana B. 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

