

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: 2008-13644
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 28, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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, a telephone hearing was held on July 28, 2009. Claimant did not appear and testify at the hearing. Claimant was represented at the hearing by [REDACTED] as an authorized representative. This Administrative Law Judge did attempt to contact claimant by telephone and did connect with his voicemail and left a message but he did not contact the office back nor did he appear for the hearing and he did receive notice.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

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 August 27, 2007, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On September 13, 2007, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On October 17, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On December 18, 2007, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 9, 2009, the State Hearing Review Team again denied claimant's application stating that the State Hearing Review Team needed additional medical information in the form of a complete physical examination.

(6) Because claimant was not at the hearing and the claimant's representative did not have contact with the claimant, claimant's representative requested to submit additional medical information which she did do.

(7) Additional medical information was accepted, and it was a [REDACTED] Medical Examination Report.

(8) Claimant is a 43-year-old man whose birth date is [REDACTED]

(9) Claimant alleges as disabling impairments: cardiomyopathy and anxiety.

(10) The claimant's representative requested that their record be closed when she submitted the additional medical information.

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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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 did not attend the hearing and, therefore, no testimony could be taken for him to determine whether or not he should be eligible or disqualified from receiving disability at Step 1. This Administrative Law Judge will not disqualify claimant at Step 1.

The objective medical evidence on the record indicates that a Medical Examination Report of [REDACTED], indicates that claimant was normal in all areas of examination except that he had cardiomegaly. Claimant was 75" tall and weighed 307 pounds. His blood pressure was 130/96 and he was right-hand dominant. The clinical impression was that claimant's condition was stable. Claimant could frequently lift less than 10 pounds, occasionally lift 10 pounds, and never lift 50 pounds or more. Claimant could stand and/or walk at least two hours in an eight-hour workday and could sit about six hours in an eight-hour workday. Claimant did not medically require an assistive device for ambulation. Claimant could use both of his upper extremities for simple grasping, reaching, pushing/pulling, and fine manipulating and could operate foot and leg controls with both feet and legs. (Pages A1-A2 of the New Information)

A Mental Status Examination conducted [REDACTED] indicates that claimant drove himself to the office. His height was 73-1/2" tall and his weight was 326 pounds. Posture and gait were within normal limits. He was able to remember his appointments and attend them. Claimant's contact with reality was intact. Self esteem was not much. He had no motivation. He

was pleasant and insightful. Claimant was spontaneous, logical, and coherent. He had no formal thought disturbances or other problems in this area. The claimant denied having had any delusions, hallucinations, or other psychotic symptoms. He feels worthless but not suicidal. Claimant sleeps long hours during the day. His appetite was good. He said he had death wishes a couple of years ago but no longer. His affect was full of range. He was anxious about not knowing what was going to happen at work and about his future not looking very bright. He was not able to enjoy much of his life now. He did not feel hopeless or helpless. During the heart fluttering he might have shortness of breath when they are really bad. It helps if he lies down. This seems to be of organic nature and there are no panic attacks. Claimant was oriented to time, place, and person. He was able to recall six digits forward. He was able to recall all three objects and their objectives after two minutes. Remote memory was excellent. Claimant named five large cities as Chicago, New York, Philadelphia, Detroit, and Los Angeles. Claimant stated that $7 \times 6 = 42$ and addition was fine too. The interpretation of the proverb, "don't cry over spilled milk" was get over what had happened. If he should discover a fire in a theater he would leave. He was diagnosed with adjustment disorder with mixed features and a GAF of 55 to 60. He was good for the psychiatric condition and he was able to manage benefit funds.

An [REDACTED], adult echocardiogram indicates that claimant's left ventricle was moderately dilated. The right ventricular systolic pressure was at the upper limits of normal. No systolic anterior motion of the mitral valve. The mitral valve leaflets were mildly sclerotic. The mitral valve leaflets were mild to moderately thickened. Mitral valve prolapse could not be excluded. The aortic valve was mildly sclerotic. There was a mild amount of pulmonic regurgitation. There was a moderate amount of mitral regurgitation. Left ventricular systolic function was severely reduced. Ejection fraction was 25-30%. There was severe lateral wall

hypokinesis. Best contracting walls were the inferior and septal. Spectral Doppler of the mitral valve was consistent with restriction, with an E/A wave ratio more than 2.0. The left atrium was moderately dilated. There was mild concentric left ventricular hypertrophy. The tricuspid valve was normal. No tricuspid valve stenosis. There was trivial tricuspid regurgitation. There was no tricuspid valve vegetation. There was no tricuspid valve prolapse. The aortic valve was grossly normal. The aortic valve was mildly sclerotic. There was no aortic stenosis. There was no aortic regurgitation. There was no aortic valvular vegetation. The pulmonic valve was normal. There was no pulmonic valvular stenosis. There was a mild amount of pulmonic regurgitation. There were no vegetations on the pulmonic valve. The left atrium was moderately dilated. It appeared to be of normal size. The interatrial septum was intact with no evidence of an atrial septal defect. The aortic root diameter was normal. The aortic arch appeared normal from the views obtained. There was no pericardial effusion and no obvious pleural effusion.

Claimant received an unfavorable Social Security Administration decision [REDACTED]. After careful consideration, it was determined by the Social Security Administration that the claimant's earnings records show that claimant did not have any earnings in 2005 or 2006 and there are no reports in the record of substantial gainful activity during the period at issue or thereafter.

The Social Security Administration determined that claimant has congestive heart failure with shortness of breath which is a severe impairment. He alleged anxiety on the documentary record, but he does not have any severe mental impairment. Claimant had congestive heart failure in [REDACTED]. (Social Security Exhibits 2F and 9F) However, the updated medical information in the file indicates that claimant's condition has not worsened. In [REDACTED], claimant's functional capacity was assessed. He was

diagnosed with congestive heart failure and concluded that claimant could perform a wide range of light work. She opined the claimant could lift or carry up to 20 pounds occasionally and 10 pounds frequently. He could sit, stand, or walk approximately six hours in an eight-hour day. Claimant was precluded from climbing ladders, ropes, or scaffolding. Claimant must avoid concentrated exposure to extreme cold and hazards such as machinery and heights. The Social Security Administration determined that claimant has no limitation on activities of daily living and maintaining concentration, persistence, and pace. The claimant had only a mild limitation in social functioning. The claimant experienced no episodes of decompensation which would have been of extended duration. Because the claimant's medically determinable mental impairment caused no more than a mild limitation in any of the first three functional areas and no episodes of decompensation which have been of extended duration in the fourth area, it was non-severe.

(20 CFR 404.1520a(d)(1))

At Step 2, claimant is not disqualified from receiving disability based upon the fact that he does have congestive heart failure.

At Step 3, claimant's impairments do not rise to the level necessary to be considered disabling as a matter of law based upon the Social Security Administration's determination. Claimant is disqualified from receiving disability at Step 3.

At Step 4, claimant did not appear or testify at the hearing. However, this Administrative Law Judge did have the Social Security Administration's disability adjudication and review which indicates that claimant should be able to perform a wide range of light work. The Social Security Administration determined that, at the hearing, the claimant's testimony was not credible to the extent that he alleged an inability to perform even a wide range of light work. It was not supported by the medical evidence or the functional capacity assessments in the record.

The claimant testified at the Social Security hearing that he had a high school diploma and that his past work was as a bouncer and as an assembly operator. He alleged disability due to congestive heart failure and shortness of breath. He did not allege a mental impairment. He did not describe any mental health treatment. He lives in an apartment with his girlfriend. He is able to take care of his personal hygiene. He cooks, washes dishes, and goes grocery shopping. He is not able to sweep, mop, or do laundry. He watches television six to eight hours daily. He can drive about one mile. He takes medication for his cardiac condition but he alleged dizziness and fatigue as side effects. He testified he cannot sit longer than 10-15 minutes and stand longer than 15-20 minutes. He cannot lift any weight. He has shortness of breath throughout the day. He was hospitalized for 12 days in [REDACTED] due to congestive heart failure. He has heart flutters. He cannot climb or descend stairs.

The vocational expert testified via telephone. The expert testified that claimant's past work as a bouncer was light, semi-skilled work (DOT 376.667-010); as a press operator was medium, semi-skilled work (DOT 619.685-026); as a team member assembler was medium, unskilled work (DOT 806.684-010). The expert was asked to assume an individual was the claimant's age and had the claimant's education and work history. The individual could not lift or carry more than 20 pounds occasionally or 10 pounds frequently. The individual could not sit, stand, or walk longer than six hours in an eight-hour workday. The individual was precluded from climbing ropes, ladders, or scaffolding and must avoid concentrated exposure to extreme cold and hazards such as machinery and heights. The expert testified the individual could perform the claimant's past work as a bouncer, but could not perform the other past jobs. Additionally, the expert testified that the individual could work as a cashier, which is a light, unskilled job, of which there are 40,500 such jobs in the regional economy; as an office helper,

which is a light, unskilled job of which there are 11,500 such jobs in the regional economy; and as a ticket seller, which is a light, unskilled job of which there are 4,500 such jobs in the regional economy. The testimony of the vocational expert was credible and consistent with the Dictionary of Occupational Titles. The Social Security Administration determined that claimant is able to perform a wide range of light work as specified in the hypothetical question posed to the vocational expert and discussed in the decision. The Social Security decision of [REDACTED] is hereby incorporated in its entirety in this decision.

This Administrative Law Judge finds that claimant is disqualified from receiving disability at Step 4 based upon the fact that he can probably perform his past work as a bouncer.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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).

There is insufficient objective medical evidence in the record that indicates that claimant could not perform light work even with his impairments. Claimant did not testify at the hearing and did not appear so this Administrative Law Judge could not make a determination as to his subjective complaints. Therefore, based upon the objective medical evidence in the record, claimant is disqualified from receiving disability at Step 5 because he could probably perform light work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 43), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant should be able to perform a

wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED. In addition, the Social Security Administration's decision is controlling in this case.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 5, 2009

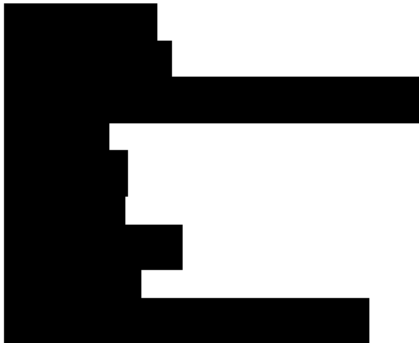
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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 mailing 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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