

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: 2008-17445

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 7, 2008

Allegan 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 August 7, 2008. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has 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) December 22, 2007, claimant applied for MA and retroactive MA.
- (2) December 31, 2007, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.
- (3) January 2, 2008, the department sent claimant written notice that the application was denied. Department Exhibit C.

(4) March 27, 2008, the department received claimants' timely request for hearing.

(5) June 4, 2008, the State Hearing Review Team (SRHT) denied claimant's application. Department Exhibit B.

(6) August 7, 2008, the in-person hearing was held. Prior to the close of the record, the Administrative Law Judge ordered claimant to obtain a physical exam and narrative report to be paid for by the department. Claimant waived the right to a timely hearing decision.

March 31, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 3-31-09.

(7) Claimant asserts disability based on impairments caused by a bad back, arthritis, diabetes, hypertension, sleep deprivation, and depression.

(8) Claimant testified at hearing. Claimant is 57 years old, 6' tall, and weighs 200 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant's driver's license is revoked. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been performing factory work and general labor.

(10) August 19, 2008, claimant underwent an independent physical examination and a narrative report was prepared. In pertinent part, the report states the following: normal respiratory effort. Normal to auscultation. Clear to percussion. Heart has regular rate and rhythm with no murmurs, gallops, rubs, or abnormal hear sounds. Systolic murmur: Grade II/VI, early, high pitched, ejection at left upper sternal border. No edema or varicosities of the extremities. No hernias. Normal bowel sounds. No masses. Abdomen soft. No tenderness. No hepatomegaly. No splenomegaly. Gait is intact. Station and posture are normal. Tenderness at lumbar spinous processes. Right and left upper extremities have no malalignment, tenderness, or masses. Full

range of motion. Normal strength and tone. Right lower extremity has no knee tenderness. Full range of motion. Normal strength and tone. Left lower extremity has no new swelling, patellar tenderness noted. Full range of motion. Normal strength and tone. Cranial nerves 2-12 are grossly intact. Deep tendon reflexes are 2+/4+ and symmetrical. Sensation is normal to touch, pin prick, and vibration. Normal proprioception. Patient is oriented x 3. Mood and affect appropriate. Reason and remote memory intact. Assessment is stable hypertension, type 2 diabetes controlled, osteoarthritis generalized multiple status unchanged. Department Exhibit A, pgs 54-56.

(11) June 12, 2006, claimant was examined by an orthopedist. Treatment notes indicate left knee demonstrates well-healed portals, slight joint line pain to palpation but no limited instability. Good motion, good strength. Hip demonstrates good flexion and extension, internal rotation is limited to about 15 degrees and causes discomfort. External rotation to 45 degrees and abduction to 45 degrees. Intact strength, groin pain with motion. Neurovascular status is intact. Assessment is left hip probable avascular necrosis. On or about June 23, 2006, claimant underwent an MRI of the left hip and a report was prepared that states osteoarthritis left hip with a large subcortical cyst with some intermediate signal debris in the cyst. The appearance looks unchanged compared with the June 12, 2006 hip x-ray exam from the orthopedic clinic. It is possible that the findings are the sequelae of old avascular necrosis. Department Exhibit A, pgs 25-28. July 6, 2006, claimant again was examined by the orthopedist. Treatment notes indicate patient demonstrates painful motion, most of the pain is radiating into the buttock area but also in the groin. He is able to flex up to 120 degrees, has internal and external arc of roughly 60 degrees. Pain with the extremes of motion. pain with attempted muscular evaluation.

Otherwise, no calf pain, and he is grossly neurovascularly intact. Assessment is arthritis of the left hip. Department Exhibit A, pg 29.

(12) On or about August 29, 2006, claimant underwent a routine mental health appointment and medication review. Treatment notes indicate that claimant's mood is depressed and that he has been depressed for years. Claimant reports episodic thoughts of suicide without intent or a plan. No history of suicidal attempt and denies thoughts of homicide. Patient denies hallucinations and paranoia. Patient indicates that he has not used alcohol or drugs in the last two months. He reports being scheduled for a left hip replacement. Memory and concentration appear minimally decreased. Patient is alert and verbalizes thoughts in coherent manner. Oriented x 3. Insight and judgment are limited. Speech is clear with a normal rate and rhythm and tone. Thought flow and content are appropriate with no evidence of psychotic symptoms observed. Impression is depressive disorder with secondary anxiety. Current GAF is assessed at 53. Department Exhibit A, pgs 30-31.

(13) September 27, 2007, claimant underwent an independent psychological exam and a narrative report was prepared. AXIS I diagnoses are mood disorder due to medical condition and alcohol dependent in reported remission. GAF is assessed at 55. Claimant was somewhat disoriented to time reporting the date as September 24, 2007, rather than September 27, 2007. He was oriented to time and place. Cognitive functions were generally within normal limits. Department Exhibit A, pgs 48-50. Psychologist opined that claimant is markedly impaired in 4 of 20 areas of functioning and not significantly limited or moderately limited in 16 of 20 areas of functioning. Department Exhibit A, pgs 51-52.

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, claimant has arthritis in his left hip. Physical examination and assessment revealed pain with motion, limited range of motion, and no neurologic deficits. The objective medical evidence of record indicates that claimant has long history of depression and history of substance abuse. Claimant's cognitive functions were generally within normal limits with the exception of he stated the day of the month being different than the actual date. GAF was assessed at approximately 55 indicative of moderate symptoms for difficulties. Finding of Fact 10-13:DSM IV, 1994 R.

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. Accordingly, claimant is disqualified from receiving disability at Step 2.

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

At Step 4, claimant's past relevant employment has been in factory work and general labor. See discussion at Step 2 above. Finding of Fact 9-13. The medical evidence of record indicates claimant was scheduled for a hip replacement. The record does not indicate whether claimant has undergone this surgery. Considering the function of claimant's left hip, it appears unlikely claimant will be able to perform work duties that require heavy labor.

At Step 4, 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 him from performing a full range of duties required by his past relevant employment.

Accordingly, 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, see discussion at Steps 2 and 4 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 unskilled, sedentary work activities.

Considering claimant's Vocational Profile (advanced age, high school education, and history of unskilled work) and relying on Vocational Rule 201.04, claimant is disabled. Accordingly, claimant 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 to qualify for Medical Assistance based on disability.

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.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's eligibility for Medical Assistance effective the earliest appropriate retroactive month prior to the application month of December 2007. If otherwise eligible, medical review is set for June 2011. Claimant shall seek and participate in mental health treatment. Claimant shall provide treatment records at review. Failure to do so may affect future eligibility.

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

Date Signed: July 14, 2010

Date Mailed: July 14, 2010

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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