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: 2008-25290
Issue No: 2009
Case No: [redacted]
Load No:
Hearing Date:
August 20, 2008
Ingham 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 20, 2008. 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 25, 2007, claimant applied for retro-active MA, MA, and State Disability Assistance (SDA). Claimant submitted medical records for department consideration.

(2) February 14, 2008, the Medical Review Team denied claimant's application. Department Exhibit (Department) A.

(3) March 6, 2008, the department sent claimant written notice that the application was denied.

(4) May 29, 2008, the department received claimant's timely request for hearing.

(5) July 28, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) August 20, 2008, the in-person hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. August 26, 2008, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 8/26/08.

(7) Claimant asserts disability based on impairments caused by cervical and back problems, anxiety, depression, COPD, and hearing loss.

(8) Claimant testified at hearing. Claimant is 49 years old, 5'10" tall, and weighs 190 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license but does not drive due to dizziness. Claimant cares for his needs at home.

(9) Claimant's past relevant employment has been doing lawn mower repair, apartment management, and factory work.

(10) June 7, 2007, claimant presented to emergency room complaining of chest pain. Physical exam was conducted and revealed, in pertinent part: heart has regular rate and rhythm; S1, S2 of average intensity, no murmur, gallup, or rub appreciated; lungs are clear to auscultation bilaterally with no wheeze or rhonchi noted; extremities have no edema; abdomen is soft,

nondistended, nontender, bowel sounds are present. Objective cardiac testing was planned; however, test results were not submitted into evidence. July 23, 2007, claimant presented to emergency room complaining of chest pain. Physical exam revealed, in pertinent part: heart has regular rate and rhythm without murmur; pedal pulses present and equal; cranial nerves II-XII are intact, reflexes upper and lower extremities 2+. Strength in upper and lower extremities 5/5; chest is clear to auscultation; BP 142/68, respirations 20, O2 saturation is 100% on 2 liters nasal cannula. Claimant was admitted and underwent objective medical testing; however, the results of the tests were not submitted into evidence. Claimant A; Department A. August 13, 2007, claimant underwent neurology evaluation and a report was prepared that states neuro-vestibular exam was within normal limits and doctor doubts primary vestibulopathy. Department A, Report, 8/13/07. October 7, 2005 hearing evaluation revealed mild-moderate hearing loss and normal or essentially normal middle ear function. Department A, Report, 10/7/05.

August 3, 2008 chest x-rays reveal hyperinflation consistent with COPD with some mild fibrosis, no acute infiltration evidence, slight increase in the left apical pleural thickening since 7/22/07, nonspecific in nature. Claimant A, Report, 8/3/08. August 5, 2008, CT scan revealed multilevel degenerative changes within the cervical spine resulting in moderate central canal stenosis at the C5 through C7 levels; no acute cervical spine pathology. Claimant A, Report, 8/5/08.

August 6, 2008, CT scan of the thoracic spine revealed mild multilevel degenerative disc disease and facet degeneration throughout thoracic spine, no acute osseous abnormalities are identified; no visible disc herniation or canal stenosis, mild scoliosis. Extensive bullous emphysematous changes are present within both lungs; evidence of previous granulomatous disease. Claimant A, Report, 8/5/09. CT scan of the lumbar spine revealed degenerative disc disease and spondylosis resulting in mild central canal stenosis at the L3-4 and L4-5 levels. Claimant A, Report, 8/5/08.

(11) January 21, 2008, claimant underwent an independent physical exam and a report was prepared that states, in pertinent part: blood pressure of 137/79; JAMAR are full and equal; neck is supple without adenopathy, thyromegaly, or bruits; negative Spurling's; some left paravertebral tightness, more on the right; chest is clear with no rales, wheezes, or rhonchi; heart has regular rate and rhythm; mild paralumbar tenderness with forward flexion to 90 degrees and backward extension of 10 degrees; right and left rotator to 20 degrees; he can get in and out of chair, on and off exam table slowly without difficulty; able to heel, toe, tandem; no assistive device appears necessary; demonstrates relatively normal range of motion of the back and neck, although there is some paravertebral tightness and paralumbar tenderness mildly; no acute radiculopathy; full range of motion in the shoulders, although he demonstrates slowly and with some audible sounds of distress; no impingement; remainder of musculoskeletal system within normal limits. Neurologic testing revealed cranial nerves II-XII are grossly intact without overt motor, sensory, or cerebellar abnormalities, DTR's +2 and symmetrical. Assessment is history of constellation of symptoms and chronic cervicothoracal lumbar discomfort. Department A, pages 7-10.

(12) January 16, 2008, claimant underwent an independent psychological evaluation and a report was prepared that states AXIS I diagnoses of panic disorder without agoraphobia and rule out somatoform disorder. Attitude was very anxious and stressed. He appeared to be quite somatically preoccupied. There was no evidence of illogical, bizarre, or circumstantial ideation. Beck testing revealed evidence of moderate to severe anxiety, social discomfort, fear, and somatic preoccupation. Claimant was oriented X3. Memory and calculation were intact. Information was in average range. Abstract reasoning was within normal limits. Judgment was in average range. GAF was assessed at 55. Department A, pages 3-6.

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 <u>not</u> 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 neurology evaluation that revealed neuro-vestibular exam was within normal limits and doctor doubts claimant has primary vestibulopathy. Hearing tests revealed mild-moderate hearing loss and normal or essentially normal middle ear function. Clamant has hyperinflation of the lungs consistent with COPD and emphysematous changes in both lungs. Claimant has degenerative changes in his cervical, thoracic, and lumbar spine. Physical exam and functional assessment revealed relatively normal range of motion in back and neck, with some paravertebral tightness and paralumbar tenderness with forward flexion to 90 degrees, backward extension of 10 degrees, and left and right rotator to 20 degrees. Claimant was able to perform a full range of orthopedic maneuvers. Finding of Fact 10-11.

At Step 2, clamant underwent an independent psychological assessment and a report was prepared that states AXIS I diagnoses of panic disorder without agoraphobia and rule out

somatoform disorder. Claimant was oriented x3 with memory, calculation, information, judgment and abstraction with in normal limits. Claimant appeared anxious and stressed and quite somatically preoccupied. GAF was assessed at 55. Finding of Fact 11.

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 doing lawn mower repair, apartment management and factory work. See discussion at Step 2, above. Finding of Fact 9-11.

At Step 4, the objective medical evidence of record is not 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 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 Step 2, above. Finding of Fact 10-11.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least unskilled medium work activities. Considering claimant's Vocational Profile (younger individual, high school education, and history of unskilled work) and relying on Vocational Rule 203.28, 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: August 24, 2009

Date Mailed: August 25, 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: [redacted]