

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.: 2008-11319  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
May 21, 2008  
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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, the Claimant and his representative appeared at a hearing held at the Department of Human Service (Department) in Wayne County.

The closing date was waived. Additional medical records were reviewed by the State Hearing Review Team (SHRT) and they denied the application. The matter is now before the undersigned for final decision; and finding the medical records sufficient to make a decision for time periods beginning May 2007

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) and retroactive MA-P programs?

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 24, 2007 the Claimant applied for MA-P.
- (2) On September 17, 2007 the Department denied the application; and on November 3, 2008 SHRT denied the application finding the medical records insufficient; and the medical evidence included two hospitalizations in October and November 2008.
- (3) On December 11, 2007 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED]; and the Claimant is fifty-six years of age but was age 54 in May 2007.
- (5) Claimant completed grade 10; and can read and write English. Department Exhibit (DE) 1, p. 3B.
- (6) Claimant last worked in 2004 for temporary services in factory production but at the time of the hearing volunteers as a minister, and playing the organ one day a week.
- (7) Claimant has alleged a medical history of chest pain, renal failure, mitral valve regurgitation, congestive heart failure, hypertension and hepatitis C for ten years.
- (8) May and June 2007, in part:

May: Admitted for chest pain and shortness of breath on exertion. Admits used IV heroin last week and cocaine regularly. History of hypertension but has been non-compliant with taking medications. The patient insisted on leaving the hospital and signed out [REDACTED] [REDACTED] DE 1, pp. 5-37

CURRENT DIAGNOSIS: Congestive Heart Failure, chronic kidney disease, acute renal failure, coronary artery disease, hepatitis C, IV drug abuse.

NORMAL EXAMINATION AREAS: HEENT; Abdominal, Musculoskeletal, Neuro, Mental.

FINDINGS: shortness of breath and generalized tenderness crackles at lung bases, systolic murmur.

CLINICAL IMPRESSION: improving.

PHYSICAL LIMITATIONS: No Physical Limitations. No assistive devices needed. No mental limitations. Medications:

[REDACTED]  
[REDACTED]. IM. DE 1, pp. 4 A, B.

(9) June and August 2007, in part:

June: Admitted for chest pain. Diagnoses: diastolic heart failure, congestive heart failure, mitral valve disorder, opioid abuse, Cocaine abuse, Chronic viral hepatitis C, Acute renal failure, Chronic kidney disease, stage III (moderate), pneumonia, Hypertensive chronic kidney disease state I through Stage IV, History of non-compliance with medical treatment. Patient wanted to leave after disconnecting his telemonitor and IV. Risks of non-treatment explained. Got dressed and waited to leave. Vital signs stable and medications prescribed and wife picked him up. Claimant A, pp. 27-63

August: Admitted for chest pain. No blood pressure medication taken for few days. Admits to smoking cigarettes and use of heroin. Patient states he currently uses his legs to inject heroin. Medically treated and blood pressure under control. Stress test and EKG negative. Feeling better and no chest pain. Physical Examination [Within normal limits.] Ambulatory. [REDACTED] Claimant A, pp. 2-21

(10) March, June, October and November 2008, in part:

March: Admitted for chest pain and elevated troponin levels. Denies recent cocaine and heroin use. But still smoking half pack cigarettes daily. Agreed to TEE but could not perform cardiac catheterization due to renal failure. Medically managed and follow up was arranged as outpatient and patient given clinic appointments and will follow to see if renal failure clears up for cardiac catheterization. Discharged to home with medications and vital signs stable. Ambulatory. [REDACTED] Claimant A, pp. 64-91B

June: Pulmonary Function Test: BEST VALUE: FVC—2.51. FEV1—1.76. Effort and cooperation: Fair. No significant improvement post med. Height 71” Claimant Exhibit C.

October: Admitted for chest pain. Was just D/Cd one week ago. Did not take [REDACTED]. Last use of heroin one day prior to admission; 2-3 times a week. Smoking cigarettes. On testing

ejection fraction was 35%. Signed out [REDACTED] after was explained of all consequences of leaving prior to treatment resolutions. [REDACTED]. Pages 1-36.

November: Chest pain with inspiration and weak cough. Results of urine drug screen testing for opiates, morphine, codeine and hydrocodone sent to lab for confirmation for medical purposes; and found positive. Denies recent drug use for one month. States compliant with prescribed medications except [REDACTED]. CXR: mild congestive heart failure.

Vascular surgery performed permanent catheter for dialysis placed without complications. Refusing to take medications from nurse but frequent requests for [REDACTED]; and gets agitated, abusive and demanding. Vascular Surgery Note: Feeling much better, BP 166/98 negative edema. Denies shortness of breath or chest pain. Lungs clear to auscultation. Alert and orientated times 3. Teaching done regarding permanent catheter site care and prescriptions given for discharge to home. [REDACTED]. Pages 37-108.

#### 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 400.1 *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).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity (SGA). 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not performing SGA. Thus, the Claimant is not disqualified for MA at step one in the evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples 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)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F2d 685 (6<sup>th</sup> Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985)

In this case, the Claimant has presented medical evidence and testimony that support physical impairments. See finding of facts 8-10. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and will last for a lifetime. See finding of facts 8-9. It is necessary to continue to evaluate the Claimant’s impairments under step three.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical and mental impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant’s medical record will not support findings that the physical impairments are “listed impairment(s)” or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii) According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. In this matter, the medical records established continuing substance abuse, non compliance with medical recommendations/treatment and signing out AMA, the last time was in October 2008.

20 CFR 416.930 discusses the “Need to follow prescribed treatment” if the treatment can restore ability to work.

- (a) What treatment you must follow. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work, or, if you are a child, if the treatment can reduce your functional limitations so that they are no longer marked and severe.
- (b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.
- (c) Acceptable reasons for failure to follow prescribed treatment. We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have an acceptable reason for failure to follow prescribed treatment. The following are examples of a good reason for not following treatment:
  - 1) The specific medical treatment is contrary to the established teaching and tenets of your religion.
  - (2) The prescribed treatment would be cataract surgery for one eye when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.
  - (3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
  - (4) The treatment because of its enormity (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or
  - (5) The treatment involves amputation of an extremity, or a major part of an extremity.

There was no evidence of good reasons for failing to follow prescribed treatment for the time periods May 2007 to October 2008. Further, the Claimant was not truthful at hearing by saying his last use of substances was in May 2007. See finding of facts 8-9. The credibility of the Claimant’s testimony is damaged. Thus, the undersigned cannot find the Claimant disabled pursuant to 20 CFR 416.930 because the hearing record and the Claimant’s medical records do

not establish good cause reasons for failing to follow prescribed treatment that would restore him to work ability under Appendix 1 of Subpart P of 20 CFR, Part 404.

In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program, for time periods May 2007 through October 2008. Sequential evaluation under step four or five is necessary for time periods beginning November 2008. 20 CFR 416.905

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the Claimant's impairment(s) prevent Claimant from doing past relevant work. 20 CFR 416.920(e) Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment. See 20 CFR 416.945.

Claimant's past relevant work was factory work. The November 2008 medical records establish that the Claimant was undergoing dialysis for kidney failure. This prevents past relevant work and all other work at the present time. The undersigned finds the Claimant is "disabled" at step four.

#### DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "not disabled" for purposes of the Medical Assistance program for time periods May 2007 through October 2008; and finds the Claimant is "disabled" for the time period beginning November 2008.

It is ORDERED; the Department's determination in this matter is AFFIRMED in part; and REVERSED in part.

Accordingly, The Department is ORDERED to initiate a review of the Claimant's eligibility for the time period beginning November 2008 to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in April 2010.

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/s/  
Judith Ralston Ellison  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: 04/21/09

Date Mailed: 04/21/09

**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.

JRE/jlg

cc:

[REDACTED]