

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: 2008-15567
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 16, 2008
Shiawassee County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 July 16, 2008. Claimant personally appeared and testified. He was assisted by

[REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) eligibility standards?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is a twice divorced, 48-year-old high school graduate with one year of post-secondary education ([REDACTED]) who stands approximately 5'9" tall and weighs approximately 185 pounds.

(2) Claimant has an extensive tobacco abuse history (1 pack per day x 40 years), but he claims to have quit cold turkey two weeks before his July 16, 2008 disability hearing date.

(3) Claimant's state prison medical records document a history of high blood pressure and high cholesterol, both adequately controlled with prescription medications

([REDACTED]); claimant's prison out date: 10/23/07 (Department Exhibit #1, pg 35).

(4) On October 25, 2007, claimant applied for a disability-based monthly cash grant (SDA) and medical insurance (MA).

(5) Claimant reports he had a heart attack in 2005, but medical records from [REDACTED] that year document only that claimant underwent a heart catheterization on October 6, 2005 which evidenced a mild blockage in his left anterior descending artery (20-30%) that did not require stenting (Department Exhibit #1, pgs 160-161).

(6) Diagnosis at that time was mildly reduced left ventricular systolic function and minor left anterior descending artery disease; claimant's ejection fraction was 42-45% (Department Exhibit #1, pgs 160-161).

(7) Despite claimant's extensive tobacco abuse history, his 2005 chest x-rays verified no active pulmonary disease, just like updated chest x-rays taken in February 2008 (Department Exhibit #1, pg 159; Client Exhibit A, pg 9).

(8) Likewise, claimant's February 2008 EKG was normal and his doctor's March 2008 assessment lists a 68% ejection fraction much improved from 2005 (Client Exhibit A, pgs 1 and 9)(See also Finding of Fact #6 above).

(9) A September 2008 cardiac stress test was deemed to be adequate; claimant's LV myocardial perfusion, Global LV function and LV regional wall function were all normal (Client Exhibit C, pg 33).

(10) Claimant alleges chronic, debilitating pain in his neck and lower back, in combination with his cardiac and pulmonary symptoms, cause him to be unable to engage in any type of substantial gainful work activity.

(11) Cervical spine x-rays done in June 2008 verify degenerative changes (osteophyte formation) throughout claimant's cervical spine with narrowing of his disc spaces at C5-6 and C6-7, as well as neural foraminal narrowing bilaterally at C3-4, C5-6 and C6-7 (Client Exhibit B, pg 11).

(12) Claimant's June 2008 lumbar spine x-rays confirm similar degenerative changes (osteophyte formation) from L1 through L3, and also at T11-T12 (Client Exhibit B, pg 13).

(13) Despite claimant's extensive tobacco abuse history he has been diagnosed with only mild chronic obstructive pulmonary disease stable on medications, according to a September 2008 overnight hospitalization report (9/5/08-9/6/08)(New Medical Evidence, pgs 1-10).

(14) On September 11, 2008, a neurosurgical consultation for claimant's reported neck pain was done and his recent cervical MRI scan was reviewed.

(15) The reviewing neurosurgeon opined as follows:

I looked at his MRI of the neck. He has spondylitic changes at C3-C4, C4-C5, C5-C6 and C6-C7. At C3-C4 there is a central herniated disc, which touches the anterior portion of the cord without compression. There is cerebrospinal fluid around the cord all the way up and down the spine; somewhat narrow at C6-C7 without frank cord compression. The fellow's chief complaint is pain in the neck, and the head and the back. I do not find physical signs of myelopathy on exam. His fine finger movements are excellent. His strength is excellent. I do not personally feel that a decompressive operation at this point is going to make him any better than he is right now. I do not think that his cord is tight enough to mandate a cervical decompression. I told him that this was my opinion and that he is welcome to seek other opinions. I have no expectation that operating on his cervical spine would

decrease the pain in his neck. I appreciate being able to participate in his care.

(16) Claimant reported at his disability hearing on July 16, 2008 he is so weak he frequently drops his coffee cups and cannot even tie his shoes, in direct contradiction to the September 11, 2008 neurosurgeon's consultative report.

(17) Claimant's March 3, 2008 physical assessment from the [REDACTED] also notes a steady gait with overall symmetrical skeletal structure and +5/5 x 4 equal/bilateral muscle strength; additionally, no fine motor coordination deficits are noted.

(18) A July 14, 2008 Medical Examination Report (DHS-49) from claimant's treating physician confirms claimant's pulmonary function test shows only mild impairment and indicates claimant uses two inhalers ([REDACTED]) as needed for symptom management (See also Finding of Fact #13 above).

(19) Claimant's past relevant work history is in truck driving and commercial/residential electric wiring, but he has not been employed anywhere since 2002; he has resided with his parents since his most recent prison out date (See Finding of Fact #3 above).

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

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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).

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.

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).

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).

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).

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).

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).

Claimant is not disqualified from receiving MA/SDA at Step 1 because he has not been gainfully employed since 2002 (See Finding of Fact #19 above).

At Step 2, claimant's diagnosed physical impairments, in combination, meet the *de minimus* standard of severity and duration required for further analysis. However, it must be noted no severe mental impairments have been shown, and claimant's pain and cardiac/pulmonary symptoms appear fully capable of adequate management with his current medication schedule.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed physical impairments do meet the level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, this Administrative Law Judge can find nothing on this record to support the medical conclusion claimant is not capable of returning to any number of truck driving jobs currently existing in the national economy. However, given the lack of detailed testimony regarding claimant's specific job duties, this Administrative Law Judge will continue the analysis to the very last step in the sequential evaluation process rather than disqualify claimant on the basis of ability to return to past work.

The very last step in this analysis is Step 5. At this step, an individual's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with some post-secondary education and an unskilled work history. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least light work, as that term is defined above.

Claimant's biggest barrier to employability appears to be his displacement from past truck driving jobs, in combination with his felony conviction record. Claimant should be referred to [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions, because he can return to other light work, as directed by Medical-Vocational Rule 202.20.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 26, 2009

Date Mailed: August 27, 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.

MBM/db

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