

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: 2008-23318  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 25, 2008  
Jackson 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, a telephone hearing was held on September 25, 2008. On date of hearing, claimant was represented by [REDACTED]. Claimant is now deceased and representation was transferred by Probate court authority to [REDACTED]. Letters of Authority for Personal Representative. [REDACTED] has authorized in writing that she wishes [REDACTED] to continue as hearing representative. Authorization to Represent, [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) July 13, 2007, claimant applied for MA and retro-active MA. Claimant submitted medical records for department consideration.

(2) October 16, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

(3) [REDACTED], the department sent claimant written notice that the application was denied.

(4) [REDACTED], the department received claimant's timely request for hearing.

(5) July 2, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

(6) [REDACTED], the telephone hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived his right to a timely hearing decision.

(7) Claimant asserts disability based on stroke, neuropathy, diverticulitis, torn left bicep tendon, hypertension, diabetes, arthritis, and hernia repair. Claimant was deceased on [REDACTED]. Death Certificate, [REDACTED].

(8) Claimant testified at hearing. Claimant was 47 years old, 5'7" tall, and weighed 200 pounds. Claimant completed 12<sup>th</sup> grade and the iron workers apprenticeship. He was able to read, write, and perform basic math. He was able to care for his needs at home.

(9) Claimant's past relevant employment was as an ironworker.

(10) [REDACTED], the Social [REDACTED] found that claimant was disabled under the [REDACTED] for the period [REDACTED] through the month of his death, [REDACTED] [REDACTED]

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).

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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).

Due to the SSA approval of claimant's disability for the period beginning

██████████ and ending the month of his death, ██████████ it is not necessary for the

Administrative Law Judge to discuss the matter of disability. Finding of Fact 10. Claimant

meets the disability requirements for MA effective the earliest applicable retroactive month prior to the month of his application, July 2007.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant has established disability for Medical Assistance.

Accordingly, the department's action is **HEREBY REVERSED**. If the department has not already done so, it is to initiate a determination of claimant's financial eligibility for MA effective the earliest appropriate retro-active month preceding his [REDACTED] application in compliance with department policy and this decision and order.

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

Date Signed: [REDACTED] \_\_\_\_\_

Date Mailed: [REDACTED] \_\_\_\_\_

**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.

2008-23318/jab

JAB/db

cc:

