

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: 2009-19324
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2009
Newaygo 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, a telephone hearing was held on June 10, 2009. Claimant and his sister personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) 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 divorced, 55-year-old male with a 10th grade education and a very extensive smoking history who has resided with his 75-year-old mother since he lost his job when the factory he worked at relocated to [REDACTED] in 2005 (Department Exhibit #1, pgs 6, 8 and 57).

(2) Claimant has been self-employed in part-time heavy concrete work/construction/truck repair since then, although he has been seeking a factory job of the type he historically performed (machine operator/high-low driver).

(3) Claimant stands 5'6" tall and is medically obese at a reported weight of 200 pounds (BMI=32.3) in June, 2009.

(4) Claimant is fully independent in all self cares and basic activities of daily living; additionally, he assists his mother with yard work, housework, doctor's appointments, shopping, etc.

(5) On December 4, 2008, claimant was admitted to the hospital from his doctor's office with severe chest pain.

(6) Claimant's hospital records verify he spent nine days in-patient (12/05/08-12/13/08)(Department Exhibit #1, pg 60).

(7) These medical records are negative for myocardial infarction (heart attack); however, they do show claimant had severe atherosclerotic coronary artery disease in multiple vessels (via a cardiac catheterization done at [REDACTED])(Department Exhibit #1, pg 60).

(8) On December 9, 2008, claimant underwent coronary artery bypass grafting x 4; he remained hemodynamically stable during surgery and was transferred to the cardiovascular recovery unit in good condition (Department Exhibit #1, pgs 57-59).

(9) Claimant was stable for discharge home on post-operative day four (Department Exhibit #1, pg 60).

(10) While hospitalized, chest x-rays were performed due to claimant's 35 pack per year smoking history; no evidence of acute pulmonary disease was found (Department Exhibit #1, pgs 46 and 58).

(11) However, claimant's outpatient cardiac follow-up report, dated December 31, 2008, notes that the operative findings established emphysema well out of proportion to what one would expect for a patient of his age (Department Exhibit #1, pg 5).

(12) Other than that, claimant's lung fields were clear, his cardiac rhythm was normal, his blood pressure and pulse rate were good, he had only mild muskoskeletal complaints, and his sternum/leg incisions were healing appropriately (Department Exhibit #1, pg 5).

(13) As of claimant's disability application denial hearing date six months after bypass grafting occurred, claimant said his only prescriptions were high blood pressure and high cholesterol medications, an 81 mg aspirin daily and synthroid for asymptomatic hypothyroidism (Department Exhibit #3, pg 1).

(14) An updated physical examination report (2/11/09) indicates claimant quit smoking following his December, 2008 coronary bypass surgery; additionally, his lungs were clear to auscultation and no adventitial sounds were heard (Department Exhibit #3, pgs 2 and 3).

(15) Claimant's weight in February, 2009 was documented at 216 pounds (BMI=36) (Department Exhibit #3, pg 3)(See also 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

Claimant does not qualify for the MA/SDA disability coverage he seeks because he has not established the existence of any severe physical or mental impairment or “heart problem” that would prevent him from engaging in gainful employment. The records reveal that, six months after bypass surgery, claimant’s prescription schedule is consistent with standard cardiac management medications. He is fully independent in all self cares and activities of daily living. Although diagnosed with emphysematous lung disease, claimant’s recent clinical examination revealed no significant abnormalities and no prescription medications for symptom control are necessary to date.

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. Claimant’s current medication schedule appears fully adequate for his cardiac condition, as documented. In short, nothing in claimant’s file establishes he is physically or mentally incapable of working in a wide variety of unskilled jobs currently existing in the national economy, including factory jobs of the type he formerly performed.

Claimant’s biggest barriers to employability appear to be his displacement from factory work in 2005, in combination with his lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED]) for assistance with job placement and/or training consistent with his skills, interests and abilities.

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: June 11, 2009

Date Mailed: June 15, 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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