

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No. 200925378
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 11, 2009
Genesee 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on August 11, 2009. Claimant personally appeared and testified. He was represented by [REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-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 single, 46-year-old cigarette smoker with a limited Special Education history (completed 9th grade) who lives with his sister in [REDACTED].
2. Claimant initially obtained a driver's license; however, he "lost" it in [REDACTED] secondary an alcohol-related offense and he has never sought reinstatement, per self report.
3. As an adult, claimant worked in unskilled, heavy exertional, general labor positions until he underwent mitral valve replacement in February 2008; he has not been employed anywhere since then.

4. Claimant's March 2008 cardiac surgery follow-up report noted he had been experiencing occasional muscular chest pain and some shortness-of-breath since his surgery; however, no orthopnea/dizziness/palpitations/syncope/ankle swelling or PND was observed and claimant's blood pressure was excellent (110/72); additionally, a general review of all claimant's other body systems was essentially normal (Department Exhibit #1, pg 56).
5. Cardiac rehabilitation and a subsequent EKG were recommended (Department Exhibit #1, pg 57).
6. Claimant's subsequent EKG showed only mildly decreased left ventricular function with an ejection fraction of 48-50%, as well as mild global hypokinesia and a mildly enlarged heart with trivial tricuspid insufficiency (Department Exhibit #1, pg 50).
7. In April 2008, claimant underwent outpatient chest x-rays which revealed some right lower lung thickening not uncommon in long-term tobacco users; this condition was noted to be "resolving" as of April 24, 2008 (Department Exhibit #1, pgs 48 and 49).
8. Claimant also has a history of lower extremity claudication which required right arterial bypass surgery in September 2008; he was hospitalized between September 17, 2008 and September 21, 2008 for this surgery (Department Exhibit #1, pg 54).
9. Claimant's post-surgical progress report dated October 13, 2008, noted [REDACTED] was being prescribed for ongoing right lower leg pain, with [REDACTED] therapy continuing after the cardiac surgery referenced in Finding of Fact #3 above (Department Exhibit #1, pg 25).
10. On December 17, 2008, claimant's authorized representative filed a disability-based MA/retro-MA application on claimant's behalf.
11. If that application had been approved, MA/retro-MA would have assisted claimant with some of his past hospital expenses.
12. When the department denied that application, claimant's authorized representative filed a hearing request to protest the department's disability disallowance, held in the [REDACTED] [REDACTED] office on August 11, 2009.

13. Claimant stated at hearing he is completely capable of all self cares, and also, he needs no assistive devices for ambulation; however, his legs still swell/ache intermittently, his left more so than his right, per self report.
14. As of the hearing date, no further surgeries were being recommended.
15. Additionally, claimant's December 2008 follow-up report noted his [REDACTED] therapy was successful in controlling any further claudication, the pain in his legs had improved and his hypertension was well-controlled (Client Exhibit A, pg 3).
16. At that time, claimant mentioned he would like a note to return to work, and also, at the hearing he stated he was extremely bored but had no other emotional or psychological problems.

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/retro-MA at Step 1, because he has not been gainfully employed since February 2008 (See Finding of Fact #3 above).

At Step 2, claimant's surgical residuals and cardiomyopathy (enlarged heart), in combination, have left him with some range of motion limitations, general fatigue and ongoing pain. However, it must be noted no severe mental impairments have been shown, and claimant's symptoms appear fully capable of adequate management with the prescription medications currently being used.

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 meet the *de minimus* 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, the record supports a finding claimant's former, heavy exertional general labor jobs may well be beyond his current physical capabilities. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with a limited 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 limited formal education in combination with his lack of recent connection to the competitive workforce. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA definitions because he can return to other unskilled, light work as directed by Medical-Vocational Rule 202.17.

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 eligibility standards.

Accordingly, the department's denial of claimant's December 17, 2008 MA/retro-MA application is AFFIRMED.

/S/

Marlene B. Magyar
Administrative Law Judge
for Duane Berger, Acting Director
Department of Human Services

Date Signed: January 10, 2010

Date Mailed: January 10, 2010

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.

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