

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: 2009-26692
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 20, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 August 20, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance (retro MA-P)?

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 March 24, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On May 8, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On May 13, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 18, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 30, 2009, the State Hearing Review Team again denied claimant's application stating that there was insufficient evidence and requested additional medical information.

(6) The hearing was held on August 20, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on September 2, 2009.

(8) On September 15, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) pursuant to Vocational Rule 202.07.

(9) Claimant is a 61-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 210 pounds. Claimant has a Master's Degree in Communication Arts and is able to read and write and does have basic math skills.

(10) Claimant last worked February 2006 as a salesperson selling auto repair manuals. Claimant has also worked as a taxi driver and a copywriter.

(11) Claimant alleges as disabling impairments: hypertension, pancreatitis, heart disease, blockage of the circumflex artery, congestive heart failure, atrial fibrillation, diabetes mellitus, peripheral neuropathy, migraines, dizziness, and chest pain.

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).

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).

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).

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).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since February 2006. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that on physical examination of [REDACTED], claimant was 5' 9" tall and weighed 210 pounds. His temperature was 98.1 and his blood pressure was 128/84. His pulse was 84 and respiration was 16. HEENT: Normocephalic. Eyes: PERRLA. Fundoscopic: No AV narrowing and no papilledema. Nose: Nostrils were patent bilaterally. Ears: Tympanic membranes were intact. Oral Cavity: A few cavities noted. Neck was supple with no JVD and no bruits. The chest was essentially clear to auscultation and percussion. Cardiovascular had normal S1 and S2 without murmurs or gallops. Abdomen was soft with mild obesity. No hepatosplenomegaly, no organomegaly, and no hernias. No pulsatile mass and no palpable mass. There was a left inguinal scar noted but no sign of an inguinal hernia. In the extremities there was no edema. Neurologically, the claimant was alert and oriented. Deep tendon reflexes were +2 and motor +4. The claimant's mental status was

10/10. The impression was that claimant has significant coronary artery disease, hyperlipidemia, hypertriglyceridemia, nephrolithiasis, history of hypertension, history of vertigo and chronic labyrinthitis, and history of cephalgia.

On [REDACTED], claimant was admitted for the performance of a cardiac catheterization because he had a chronic occlusion of the circumflex artery with moderate collaterals seen from the proximal circumflex to the distal circumflex and also from the LAD to the circumflex artery. He had mild disease in the right coronary artery and moderate left ventricular dysfunction. His ejection fraction was about 45%. There was no mitral insufficiency. No gradient across the aortic valve. The right coronary artery was dominant and a medium sized vessel with mild disease in the middle segment causing less than 50% stenosis. The circumflex artery had moderate disease proximally causing about 50% stenosis in long fashion then becoming totally occluded at the site of the first obtuse marginal. The procedure was aborted because the wire was subintimal and there was dye staining at the lesion site but there was no oozing outside the vessel lumen. The claimant remained symptom free and the impression was a failed attempt to open the chronically occluded left circumflex artery due to inability to cross with the wire and due to complex lesion that was surrounded by bridging collaterals.

A [REDACTED], cardiology report indicates that claimant had dyspnea which severity was mild. Duration with each episode was variable. Frequency of shortness of breath was variable. The symptoms have not changed a great deal. Increased breathlessness associated with exertion and walking. Shortness of breath was relieved by stopping activity and resting. The location of claimant's leg pain was bilateral in the legs. The quality was cramping. The pain was mild. The symptoms had been of variable duration. The pain occurs after walking one block. There were no modifying factors noted. Edema was bilaterally located in the feet. There were no

clearly defined precipitating factors for the edema. There were no modifying factors noted.

Claimant's pulse was 89, right radial, regular. Blood pressure was 146/90 in the right arm and his weight was 210 pounds. He was well-developed, well-nourished, and in no acute distress. PMI was not displaced. No thrills, lifts, or palpable S3 or S4. There was regular rate and rhythm in the cardiovascular area. Normal carotid pulses with no bruits. Normal pedal pulses and capillary refill. There was normal respiratory effort and lungs were clear to auscultation. In the abdomen there was no evidence of ascites. The impression was dizziness and leg claudication.

An [REDACTED] cardiac report indicates that claimant's pulse was 94, right, radial. His blood pressure was 110/90. He weighed 213 pounds. He was well-developed, well-nourished, and in no acute distress. He had normal carotid pulses with no bruits. Normal pedal pulses and capillary refill. PMI was not displaced. There were no thrills, lifts, or palpable S3 or S4, regular rate and rhythm. No edema of the extremities. There was normal respiratory effort. Lungs were clear to auscultation.

At page 49 of the medical reports, a cardiac evaluation indicated claimant had a stress treadmill Cardiolute study which indicated: the resting perfusion images revealed a medium sized perfusion abnormality with severe intensity involving the basal inferior wall. There was also a medium sized perfusion abnormality, with moderate intensity, involving the basal inferolateral wall. Gated study was performed to assess the left ventricular function and performance and showed moderate hypokinesis involving the basal inferior wall.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. This Administrative Law Judge finds that the objective medical evidence on

the record has established that claimant does have a severe impairment or combination of impairments which have kept him from working for the durational requirement of 12 months.

At Step 3, the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 4, this Administrative Law Judge finds that claimant could probably not perform his past work as a book salesman which did require some lifting and carrying and walking long distances. Claimant has also been a taxi driver and a copywriter. This Administrative Law Judge finds that claimant could probably not perform his past work even with his impairments based upon his ejection fraction of 45%.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. However, based upon claimant's advanced age at 61, a person who is advanced age with a high school education or more and does not provide direct entry into skilled but who has done skilled or semi-skilled work in the past is considered disabled pursuant to Medical-Vocational Rule 202.06. This Administrative Law Judge finds that based upon the Medical-Vocational Rule 202.06, claimant is considered disabled for purposes of Medical Assistance and retroactive Medical Assistance benefit eligibility based upon his advanced age, work experience, and lack of residual functional capacity.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately establish on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. This Administrative Law Judge finds that claimant does meet the disability criteria for Medical Assistance benefits and retroactive Medical Assistance benefits to the March 24, 2009 application date.

Accordingly, the department's decision is REVERSED. The department is ORDERED to initiate a review of the claimant's March 24, 2009 Medical Assistance and retroactive Medical Assistance benefit application, if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing.

The department is ORDERED to conduct a review of claimant's Medical Assistance benefit eligibility in November 2010 and shall assist the claimant in providing additional medical information. Claimant should provide updated DHS-49 forms, updated general medical information from a treating physician as well as updated cardiology information.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 4, 2010

Date Mailed: January 4, 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 mailing 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.

LYL/vmc

cc:

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