

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: 2009-29899
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 3, 2009
Oceana County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 3, 2009, 2009. Claimant personally appeared and testified. Also appearing on claimant's behalf was [REDACTED], Patient Representative, [REDACTED] [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (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 April 17, 2009, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On May 27, 2009, the Medical Review Team denied claimant's application stating that claimant's condition lacks duration of 12 months per 20 CFR 416.909.

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

(4) On June 16, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 4, 2009, the State Hearing Review Team again denied claimant's application stating that the claimant's condition is improving or is expected to improve within 12 months from the date of onset and is not expected to prevent all types of work for 12 months in a row.

(6) Claimant is a 50 year-old man whose birth date is [REDACTED]. Claimant is 5' 7" tall and weighs 212 pounds. Claimant has a high school diploma and can read, write and do basic math.

(7) Claimant states that he last worked in November, 2007 as a delivery rider/helper for [REDACTED] job in which he delivered windows, doors, etc., for 3 months. Job ended because the person that owned the delivery truck had a dispute with the company. Claimant also worked from 2000 to 2007 as a mechanic, job that ended due to severe back pain that made him unable to work overhead and 40 hours per week.

(8) Claimant lives in a mobile home he owns, is somewhat helped financially by his parents and receives food stamps.

(9) Claimant alleges as disabling impairments: stroke, diabetes and chronic ongoing illness, arthritis in his back, shoulder and hips.

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 does 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 testified that he has not worked since November, 2007. Claimant is not disqualified from receiving disability at Step 1.

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 duration of at least 12 months.

The objective medical evidence on the record consists of a hospital report of [REDACTED] when the claimant presented with complaint of slurred speech, left-sided numbness and weakness. Claimant reported not seeing a doctor in roughly 15 to 20 years. Claimant was diagnosed with stroke and admitted to the hospital, with hyperglycemia, tobacco abuse as he was smoking one to two packs of cigarettes per day, and peripheral vascular disease. Discharge Summary cites as discharge diagnosis cerebrovascular infarct, hyperlipidemia, new onset diabetes mellitus, hypertension, nicotine abuse, and peripheral vascular disease.

Medical Examination Report for examination date of [REDACTED], states that the claimant's gait is shuffling and slow and left arm held limply at side. Claimant's speech is slurred; he has weakness in left leg, and is weaker in extension. Claimant is also depressed and his memory is fair. Clinical impression is that the claimant is deteriorating, that he is limited in lifting/carrying less than 10 lbs. occasionally, standing/walking less than 2 hours, and sitting less than 6 hours. It is noted that the claimant may need a cane or a walker for ambulation, that he cannot use either hand/arm for repetitive actions and can do simple grasping with right hand only, and that he can operate foot/leg controls with his right foot only. Claimant also has mental limitations in comprehension and sustained concentration, and is quoted as saying "Words aren't getting from my mind to my mouth".

Medical Needs form of May 4, 2009, indicates that the claimant's condition will last a lifetime and that he cannot work at any job permanently.

Additional medical information submitted following the hearing consists of [REDACTED] [REDACTED] Records starting on [REDACTED]. On this date claimant reported for his first visit stating he had a stroke 4 days ago and was discharged from the hospital with no plans for rehabilitation. He continues to have numbness and weakness in the entire left side, and some impaired speech, but normally walks without assistance and has normal mental status. Claimant stated he has not had medical care since 1999. It was noted that the claimant had smoked two packs of cigarettes a day since age 15, but quit 4 days ago when he had the stroke.

Upon examination claimant was noted to be well developed and well nourished. Claimant's blood pressure was 164/118. Claimant's speech was normal, there is no sensory loss, but there is mild upper and lower extremity weakness on the left side, and deep tendon reflexes

are diminished on the left. Claimant had full range of motion of all extremities and no extremity edema. Impression was that of CVA with left hemiparesis.

Claimant was seen again on [REDACTED] and it was noted that he continues to have mild, but significant weakness in the left upper extremity. Attempts to arrange for physical and occupational therapy will continue, although the claimant was keeping active around the home and more or less performing his own rehabilitation.

On [REDACTED], claimant reported continued weakness on his left side and stated that he cannot lift a gallon of milk. Claimant's insurance is not accepted by any physical therapy or rehabilitation practitioners. Claimant reported his limp is better, but complained of arthritis in his back and legs. Claimant was able to lift two and three pound weights very slowly, but is unable to lift a five-pound weight with his left hand. Impression was that of status post CVA, hypertension and insulin dependent diabetes.

On [REDACTED] claimant's blood pressure was a little elevated at 144/100. Claimant had moles on his left arm that were removed during this office visit.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

The Administrative Law Judge finds that claimant has met his burden of proof at Step 2.

The analysis proceeds to Step 3, where the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed

impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge does not find that he has the ability to perform past relevant work. Claimant's past relevant work was doing as a mechanic and delivering items that required heavy lifting. Claimant's medical record indicates that he continues to have weakness in his left arm and cannot lift more than 5 lbs. Finding that the claimant is unable to perform work which he has engaged in in the past can therefore be reached and the claimant is not denied from receiving disability at Step 4.

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 other 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, and that he is physically unable to perform anything but sedentary work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant has residual functional capacity to perform other work. However, under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is age 50), with a high school diploma and an unskilled work history who can perform only sedentary work is considered disabled pursuant to Medical-Vocational Rule 201.12.

The claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program. Claimant's disabling condition started in April, 2009 and his doctor indicates that the condition is deteriorating and that the claimant is not expected to be able to do any type of work for lifetime. While such prediction may be incorrect, claimant is in need of physical and occupational therapy which he cannot obtain due to lack of medical insurance. Therefore, without any medical insurance claimant's impairment is likely to last 12 months or more.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA application.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed April, 2009 MA application and grant him any such benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. If approved for MA, claimant is to participate in all prescribed treatment(s), including any physical and occupational therapy appropriate for his disabling condition.

3. Department is to review claimant's MA eligibility in September, 2010, at which time updated medical information is to be obtained from treating sources.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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.

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