

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: 2009-33115
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 30, 2009
Ingham 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, an in-person hearing was held on September 30, 2009. Claimant was represented at the hearing by [REDACTED],

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 December 19, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.

(2) On February 13, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On March 4, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On June 1, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On September 1, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The claimant was treated and released from the hospital in good condition. The claimant's condition is not expected to last more than 12 months. Per 20 CFR 416.909 the claimant's condition/alleged impairment is not expected to last for a continuous period of 12 months; or the claimant's impairment is expected to improve postoperatively. Therefore, based on the claimant's vocational profile of closely approaching retirement, high school graduate and no reported work history, MA-P is denied using Vocational Rule 203.06 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) The hearing was held on September 30, 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 November 4, 2009.

(8) On November 4, 2009, the State Hearing Review Team again denied claimant's application stating that the medical evidence continues to show that claimant's condition while severe at onset is not anticipated to last for a period of 90 days or greater. This application is

denied for lack of duration. It is reasonable to assume that considering the claimant's age, education, and past work history that Vocational Rule 203.06 is appropriate that claimant would therefore retain the ability to remain gainfully employed in a wide variety of occupations. MA-P, retroactive MA-P, and SDA are denied by this decision. Listing 7.08 was considered in this determination.

(9) Claimant is a 60-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 175 pounds. Claimant recently lost 20-30 pounds. Claimant is a high school graduate and was in special education for reading and math. Claimant is able to read and write and does have basic math skills.

(10) Claimant last worked about 5 years before the hearing as a dishwasher in a restaurant where he worked for 5-10 years. Claimant has also worked cutting lawns, painting, and doing odd jobs like painting and sweeping.

(11) Claimant alleges as disabling impairments: blood clots in the legs and lungs, deep vein thrombosis, hypertension, shortness of breath, leg swelling, and dislocated left hip.

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 for approximately 5 years. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant is status post left lower deep venous thrombosis hospitalization in [REDACTED]. The CT scan showed evidence of pulmonary embolism. He was completely asymptomatic with no chest pain, shortness of breath, cough, or wheezing. An echocardiogram done of the heart was normal. His lower extremity had normal range of motion. He had a limping gait. (p. A5) The claimant was treated medically and released in stable condition. (p. A7)

On [REDACTED], claimant was admitted to the hospital with a left deep vein thrombosis. He was alert and oriented x3 and in no acute distress. His vital signs were as follows: blood pressure 163/92, pulse 78, respirations 14, temperature 98.8, and oxygen saturation 97% on room air. HEENT: Extraocular muscles were intact. Pupils were equal and reactive, SCLERA was clear. The neck was supple with no point tenderness. The chest was clear to auscultation bilaterally. Heart: S1 and S2 no murmurs were appreciated. Abdomen: Soft, non-tender, and non-distended. Extremities: Edema noted in the left leg and the claimant had no significant tenderness behind the left knee area. He had symmetrical pulses bilaterally. Neurological: Cranial nerves II-XII were grossly intact. An OMM examination showed a TTA on the left between T4-7. His white blood count was 6.4, hemoglobin 15.8, hematocrit 45.8, and platelets 367. (pp. 10-11)

Claimant testified on the record that he lives with his mother and is single with no children under 18 who live with him. Claimant does not drive because of his eyesight and his sister and friends take him where he needs to go. Claimant does cook 2-3 per day and cooks things like meat and veggies and grocery shops one time per month with no help. Claimant does

clean his home by vacuuming and doing the dishes and does outside work by using a riding mower. Claimant testified that he can walk 4 blocks and he gets short of breath and his left leg throbs or gets numb. Claimant testified that he can stand for 2-3 hours and can sit for 2-3 hours. Claimant testified he can squat, bend at the waist, shower and dress himself, tie his shoes, and he thinks he can touch his toes. Claimant testified that his back is fine and his knees are stiff. Claimant testified that he is able to carry 25-30 pounds and that he is right-handed and his hands and arms are fine. His left leg is numb and tingling. Claimant testified that his level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 5/6. Claimant testified that he does smoke a pack of cigarettes per week and his doctor has told him to quit and he's not in a smoking cessation program. Claimant testified that in a typical day he cleans his house and does the dishes. Claimant testified that he has no mental impairment.

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. In the instant case, there is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment that meets duration. Although claimant did have deep vein thrombosis and pulmonary embolism when he was admitted in [REDACTED], his condition was resolved by the time he was released and there are no additional corresponding clinical findings in the record which indicate that claimant still has some of the same problems. There are no laboratory or x-ray findings to support claimant's statement that he has continued problems. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, the claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Claimant testified that

his level of pain on a scale from 1 to 10 without medication is a 10 and with medication is a 5/6. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers physical or mental limitations resulting from his impairments. The evidentiary record is insufficient to find that claimant suffers a severely restrictive physical or mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2 because his impairments do not meet duration. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where 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.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform past relevant work. Claimant worked as a dishwasher and should be able to do his prior work even with his impairments. There is insufficient objective medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work which he has engaged in, in the past. Thus, if claimant had not already been denied at Step 2, he would again be denied 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 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. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months.

It should be noted for the record that claimant is not in compliance with his treatment program as he does continue to smoke even though his doctor has told him to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established 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. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/

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

Date Signed: February 2, 2010

Date Mailed: February 2, 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:

