

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: 2009-3582

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 5, 2009

Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 February 5, 2009. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) May 23, 2008, claimant applied for MA and retroactive MA.
- (2) June 24, 2008, the Medical Review Team (MRT) approved claimant's application for MA and approved one retroactive month: April 2008. Department Exhibit A.
- (3) July 1, 2008, the department sent claimant written notice that his application was approved effective April 2008.

(4) October 16, 2008, the department received claimant's timely request for hearing.

(5) November 10, 2008, the State Hearing Review Team (SHRT) denied claimant's MA application and indicated that the MRT approval was an error. Department Exhibit C.

(6) February 5, 2009, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. April 24, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 4-24-09.

(7) Claimant asserts disability based on impairments caused by head injury, bad back, and neck problems.

(8) Claimant testified at hearing. Claimant is 46 years old, 6'4" tall, and weighs 226 pounds. Claimant completed high school and has training in the building trades. Claimant is able to read, write, and perform basic math. Claimant has a driver's license but does not drive due to the possibility of fainting spells. Claimant cares for his needs at home with some assistance.

(9) Claimant's past relevant employment has been in factory work, forklift driving, farming, and as a foster home caregiver.

(10) February 22, 2008, claimant was admitted to hospital following a motor vehicle accident. Objective medical testing revealed claimant to have a fractured dislocation of the right hip. Claimant underwent surgery to repair the injury. He was discharged from hospital on or about February 28, 2008. Department Exhibit A, pgs 1-142.

(11) April 24, 2008, claimant was admitted to hospital complaining of head pain and syncope. Objective medical testing revealed claimant to have a subdural hematoma. Claimant underwent surgery and was discharged from hospital on or about April 30, 2008. Department Exhibit A, pgs 187-234.

(12) May 2, 2008, claimant was admitted to hospital. Objective medial testing revealed claimant to have post operative changes of the right parietal craniotomy; subtle acute subdural hemorrhage not entirely excluded; improvement in mid line shift from previous exam of 4-25-2008; neuroforaminal stenosis at L5-S1 that is moderate to severe on the right, moderate on the left with some potential for radiculopathy; and mild degenerative change without stenosis at L4-L5. Department Exhibit A, pgs 150-177.

(13) March 21, 2009, claimant underwent an independent physical exam and functional assessment. A report was prepared that indicates the following in pertinent part: Tongue and uvular were midline. Patient can hear conversational speech without limitation. There is normal intensity, clarity, and sustainability of speech without stutter. Patient walks with a moderate limp on the right. Other than his AFO device, an assistive device is not used. Visual fields were normal by gross confrontation. There is no sclera icterus or conjunctival pallor. Pupils are equal and reactive to light. The fundi appear normal. Neck is supple with no masses or thyromegaly. No bruits are appreciated over the carotid arteries. There is no jugular venous distension. Chest A-P diameter is grossly normal. Breath sounds are of a normal intensity. There are no wheezes, rales, or rhonchi. Accessory muscles are not used. Heart exam no click or murmur was appreciated. There is no S3 or S4. Heart does not appear to be enlarged. No orthopnea is noted. Abdominal contour is normal. There is no organomegaly or masses. There is no evidence of ascites. Bowel sounds are normal. Extremities have no clubbing or cyanosis. The peripheral pulses are intact. Feet are warm and normal color. There are no foraminal bruits. There is no peripheral edema. Varicose veins are not seen. There is no stasis dermatitis or ulcerations. There is no joint instability, enlargement, or effusion. Grip strength remains intact. Dexterity is unimpaired. Patient can pick up a coin, button clothing, and open a door. Patient had

mild difficulty getting on and off the examining table, moderate to severe difficulty heel and toe walking, and mild to moderate difficulty squatting. Range of motion in the joints was reduced by 5 degrees in lumbar extension, 5 degrees in right lateral flexion, and 5 degrees in left lateral flexion. Right hip range of motion was reduced 30 degrees in forward flexion and 10 degrees in external rotation. Motor strength and function are normal. Sensory function remains intact. Patient had an obvious right foot drop. There is no shoulder girdle atrophy or spasm. Finger to nose was adequately performed. There was no dysdiadochokinesis. Romberg testing was negative. Claimant was able to recall 3/3 objects at 5/15 minutes. Reflexes were 2+ bilaterally with the exception of ankle reflexes which were 0+ at right ankle and 1+ at left ankle. Doctor indicates conclusion of hypertension well controlled and history of back and hip pain. Patient did make use of an AFO brace which would appear to be necessary for ambulation. Cane was brought to the exam which might be of benefit for distances past 50 to 100 feet or on uneven surfaces. Records viewed suggest MRI studies have revealed a defect at the L5-S1. Department Exhibit A, pgs 246-249.

(14) March 15, 2009, claimant underwent an independent psychological/psychiatric evaluation. A narrative report was prepared that indicates AXIS I diagnosis of history of cannabis abuse. At exam, claimant had adequate contact with reality and no evidence of psychomotor agitation or retardation. He appeared pleasant and apparently relaxed with no evidence of unusual dependency. Claimant's stream of mental activity was spontaneous and adequately organized. Claimant denied hallucinations, persecutions, obsessions, thoughts controlled by others, and unusual powers. Claimant denied ideation or attempt at suicide. Claimant denied depression, anxiety, suspicions, anger, or fear. Claimant demonstrated

appropriate affect throughout the interview. Claimant was oriented X 3. Cognitive functions were within normal limits. GAF was assessed at 60. Department Exhibit A, pgs 250-256.

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record establishes that claimant had a broken and dislocated hip in February 2008. He underwent surgery and in March 2009 was wearing a leg brace and required a cane to ambulate on uneven surfaces. Claimant's right hip range of motion was slightly reduced. During April 2008, claimant developed a subdural hematoma and underwent surgery. In March 2009, physical and psychiatric examination revealed no severe

impairments due to this occurrence. Claimant's AXIS I diagnosis was history of cannabis abuse. GAF of 60 indicative of mild to moderate symptoms. Finding of Fact 10-14; DSM IV, 1994 R.

At Step 2, the objective medical evidence of record establishes that claimant has a serious impairment (history of broken and dislocated hip requiring use of a leg brace and assistive device); however, the impairment does not prevent all employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been in factory work, farming work, and as a foster home caregiver. See discussion at Step 2 above. Finding of Fact 9-14. Claimant's hip injury and need for use of leg brae and assistive device would appear to make it difficult for him to perform the duties required by his past relevant employment.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent him from performing the duties required by his past relevant employment.

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).

At Step 5, see discussion at Step 2 above. Finding of Fact 9-14.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least sedentary work activities. Considering claimant's Vocational Profile (younger individual, high school graduate, and history of unskilled work) and relying on Vocational Rule 201.21, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action to deny Medical Assistance for February 2008 and March 2008 is, hereby, UPHeld. The department's approval of Medical Assistance benefits effective April 2008 is found to be in error as so stated by the State Hearing Review Team Decision of November 10, 2008.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 23, 2010

Date Mailed: September 30, 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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