

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: 2009-3685

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 13, 2009

St Clair 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 claimant's request for a hearing. After due notice, an in-person hearing was held on January 13, 2009. Claimant personally appeared and testified. He was assisted by

[REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (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 divorced, right-handed, 52-year-old long term smoker who completed 11th grade; he stands approximately 5'9" tall and is medically obese at approximately 205 pounds (BMI=30.3).

(2) Claimant has an unskilled work history in heavy exertional activities like high beam construction, crushing junk cars, heavy window washing and independent scrap recycling but he has not been gainfully employed since 2004 (Department Exhibit #1, pg 29).

(3) Claimant has a history of high blood pressure not uncommon in obesity patients and fully capable of adequate control as long as medication compliance is maintained [REDACTED] dated 4/28/09, pg 1).

(4) Claimant is fully independent in all self cares and basic living activities; he has a valid driver's license and access to a roadworthy vehicle.

(5) Claimant has resided with his elderly mother for several years; he assists her with shopping, laundry, household chores and seasonal yard work like mowing/snow shoveling; his hobbies include hunting and fishing [REDACTED] dated 4/28/09, pg 1).

(6) Claimant is not involved in any mental health treatment or counseling and medical records submitted on his behalf provide no evidence of any severe mental, emotional or cognitive impairments.

(7) On April 28, 2008, the department received claimant's MA/retro-MA application filed on his behalf by [REDACTED]. (a third party liability specialist) seeking financial assistance with the medical expenses incurred secondary to claimant's cardiac treatment history.

(8) This history is positive for ongoing atrial fibrillation (abnormal heart rhythm) which was successfully normalized through ablation therapy and cardioversion (Department Exhibit #1, pgs 501-509).

(9) Specifically, claimant testified at his disability hearing on January 13, 2009 the last time he experienced an abnormal rhythm was October 2008, and also, he has not had any long term effects from his multiple ablation/conversion procedures.

(10) At claimant's disability hearing he reported occasional lightheadedness lasting five to ten minutes and intermittent left upper extremity arm pain (his non-dominant side).

(11) Two months after claimant's MA/retro-MA application was filed he underwent an EMG/NCV evaluation which resulted in essentially normal right upper extremity findings with mild left upper extremity deviations from normal which included prolonged distal peak latency and decreased wrist/fifth digit conduction velocity (Client Exhibit A, pgs 1-8).

(12) During claimant's independent physical examination on April 28, 2009, his bilateral grip strength/manual dexterity was unimpaired, he demonstrated full range-of-motion in all joints, his motor strength and tone were normal, his reflexes were intact and symmetrical, and his resting ECG rate was normal with mild left axis deviation suggestive of mild left ventricular hypertrophy; however, his blood pressure was excellent at 110/70 ([REDACTED] [REDACTED] dated 4/28/09, pgs 1-5).

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These federal guidelines state in part:

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

At application, claimant has the burden of proof pursuant to the following section:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

The federal regulations are very specific regarding the type of medical evidence required from claimant to establish disability. The regulations essentially require laboratory or clinical medical reports consistent with claimant's reported symptoms, or with his/her treating doctor's statements regarding disability or the lack thereof. These regulations state in part:

...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).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are

demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant remains eligible at the first step since he is not currently working and has not been gainfully employed since 2004. As such, the analysis must continue. 20 CFR 416.920(b).

The second step of the analysis assesses the severity of all documented impairments. This second step is a *de minimus* standard. 20 CFR 416.920(c). Ruling any ambiguities in claimant's favor, this Administrative Law Judge finds severity is met. As such, the analysis must continue.

The third step of the analysis looks at whether an individual meets or equals one of the listed impairments. Claimant does not. 20 CFR 416.920(d). As such, the analysis must continue.

The fourth step of the analysis looks at the ability of the applicant to return to his or her past relevant work. This step examines the physical and mental demands of the work done by the applicant in the past. 20 CFR 416.920(e).

In this case, this Administrative Law Judge finds claimant cannot return to his heavy exertional past relevant work because that level of exertion might exacerbate claimant's reported pain symptoms or result in a recurrence of his previous abnormal heart rhythm. Consequently, this analysis must continue.

The fifth and final step of the analysis applies the biographical data of each applicant to the Medical-Vocational Grid Rules to determine the functional capacity of the applicant to do other work. 20 CFR 416.920(f). After a careful review of the credible medical evidence presented, this Administrative Law Judge finds Medical-Vocational Grid Rule 202.10 directs a finding of not disabled. In reaching this conclusion, this Administrative Law Judge considered claimant's age, education, previous work history and documented health conditions. She finds insufficient medical evidence to indicate claimant's cardiac history and current physical capacity

would prevent claimant from engaging in any number of light, unskilled low stress jobs currently existing in the national economy. Consequently, when taken as a whole, the evidence in this file fails to meet the regulatory requirements necessary to qualify for disability-based MA/retro-MA.

Claimant's biggest barrier to employability appears to be his lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED] for assistance with job seeking and/or training consistent with his skills, interests and abilities.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's April 28, 2008 MA/retro-MA application based on a finding he does not meet the rules necessary to qualify for MA assistance.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 15, 2009

Date Mailed: December 16, 2009

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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cc:

