

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: 2009-6238
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 29, 2009
St. Joseph 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 January 29, 2009. Claimant did not appear for the hearing. 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 October 27, 2006, claimant filed an application for Medical Assistance and retroactive Medical Assistance to July 1, 2006.
- (2) On February 1, 2007, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On February 7, 2007, the department caseworker sent claimant notice that his application was denied.

(4) On May 3, 2007, [REDACTED] filed a request for a hearing to contest the department's negative action.

(5) The hearing was held on December 18, 2007.

(6) On January 24, 2008, Administrative Law Judge [REDACTED] upheld the department's decision stating that claimant was not disabled and that claimant was disqualified from receiving disability at Steps 2, 3, 4 or 5.

(7) In the entire hearing decision from the December 18, 2007 hearing, Register Number 2007-10804 is herein incorporated into this decision.

(8) Claimant did not appear for the rehearing dated January 29, 2009.

(9) [REDACTED] requested that claimant's information be sent back to the State Hearing Review Team for further review.

(10) The information was sent back to the State Hearing Review Team on February 2, 2009 requesting that the State Hearing Review Team provide a narrative for the decision of all medical information.

(11) On February 10, 2009 [REDACTED] the manager of the Medical Consultation Unit sent back a memorandum stating: per your green sheet dated February 2, 2009 you are requesting that SHRT provide you with a narrative decision based on the entire record of a pending Circuit Court case. After reviewing the case there was no new or material medical evidence submitted to SHRT to render a decision. This case has been reviewed by SHRT twice. In each instance a decision was rendered. ALJ [REDACTED] reviewed this case and rendered a decision. Unless you are submitting additional medical evidence we cannot render another decision. Furthermore, not all of our SHRT examiners provide written summaries. Some SHRT

examiners are utilizing an abbreviated DHS-282. These examiners will not be providing SOAHR with written summaries on request as cases are assigned to staff on a regular basis. If you have new medical evidence to submit for another green sheet please forward it along with the previous DHS-282 so we may examine the medical record and not the legal record.

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, it is impossible for this Administrative Law Judge to determine whether or not claimant is employed because he did not show up for the hearing and [REDACTED] had no further information. Therefore, this Administrative Law Judge disqualifies claimant from receiving disability at Step 1.

The objective medical evidence on the record indicates that on the original date of hearing claimant was a 50 year old man who had a 9th grade education and past jobs as a machine operator, assembly line worker, painter and restaurant cook for thirty years.

The claimant alleged as disabling impairments: chronic confusion, frustration and loss of long/short term memory progressively worsening after heart attack and surgery in [REDACTED]; chronic shortness of breath and passes out a lot, progressively worsening after heart attack and surgery in [REDACTED]. Claimant had not performed substantial gainful work since August 2006.

At Step 2, the objective medical evidence on the record does not establish that claimant has a severe impairment or combination of impairments which have lasted or will last the duration of 12 months or more. Claimant last worked in August 2006. He worked after his heart attack. His application was October 27, 2006 which would have been only two months after he stopped working. Therefore, claimant's impairments do not meet duration and claimant is disqualified from receiving disability at Step 2.

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 his past relevant work. The Administrative Law Judge did not have any updated information which indicates that claimant is not currently working. Therefore, this Administrative Law Judge is unable to determine whether or not claimant could perform any of his past work. The claimant is therefore disqualified at Step 4.

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).

In the instant case, this Administrative Law Judge did not have any conversation with the claimant during the hearing because he did not show up for the hearing. Claimant's representative had had no contact with claimant and was not aware of claimant's current circumstances. Therefore, claimant is disqualified at Step 5 also because there is no additional information to determine whether or not claimant would be considered disabled for purposes of a lack of residual functional capacity. On [REDACTED], claimant had a physical examination at which he was alert and oriented x3. His pupils were equal, round and reactive to light. Eyes were normal upon inspection. His ears were normal. Nose was normal. Pharynx was normal. Neck had a normal inspection. Neck was supple. Normal heart rate and rhythm. Heart sounds normal. Pulses normal. Respiratory – no respiratory distress. Breath sounds normal. Chest non-tender. Abdomen was soft and non-tender. No organomegaly. The back had normal external inspection. The skin had normal skin color and turgor. Skin was warm and dry. There was no rash. His extremities exhibited normal range of motion. No lower extremity edema. There was no motor deficit. No sensory deficit and the reflexes were normal. He had a normal EKG. He had a normal chest x-ray. He had no acute disease in CTs of the head. CBC was normal. Comprehensive metabolic panel (Chem 14). His cardiac labs were normal. ([REDACTED]).

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 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: March 5, 2009

Date Mailed: March 6, 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 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:

A large black rectangular redaction box covering several lines of text in the 'cc:' field.