

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No: 2009-7460

Issue No: 2009

Case No:



Load No:

Hearing Date:

April 1, 2009

Ionia 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, a telephone hearing was held on April 1, 2009. Claimant and his wife personally appeared and testified.

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 married, 53-year-old male with an extensive tobacco abuse history and a limited education (completed 8th grade) who was hospitalized through a local Emergency Room (ER) on June 12, 2008 with non-specific chest pains which ultimately necessitated single

stent placement in claimant's circumflex artery to reduce a high grade blockage (70% to 0%) (Department Exhibit #1, pgs 20-24 and 40-42; Client Exhibit A, pgs 40-43).

(2) Smoking cessation has been medically recommended as such activity is contraindicated in cardiac patients (Department Exhibit #1, pg 23).

(3) After claimant's hospital discharge, he applied for disability-based MA on June 20, 2008.

(4) If claimant's application had been approved, the hospital and medical expenses associated with claimant's heart condition would have been covered by MA.

(5) Unfortunately for claimant, the department determined he was not disabled under the governing rules, thus resulting in claimant's filing of a hearing request to dispute the denial.

(6) Claimant's hearing was held on April 1, 2009.

(7) Claimant stands 5'9" tall and is medially obese at 237 pounds (BMI=35); he is right hand dominant, per self report.

(8) Updated medical records from claimant's treating cardiologist dated February 5, 2009 (8 months post hospitalization) note no severe cardiac conditions (Department Exhibit #1, pgs 2 and 3).

(9) Specifically, the cardiologist's report states in relevant part:

...On physical examination today, pulse is 72. Blood pressure is 120/80. Weight is 221. His lungs are clear. Cardiac exam revealed a normal S1 and S2 without murmurs or gallops. Upper extremity pulses were good. Lower extremity pulses were good. He had no edema and no JVD...

...We did a cardiac CTA, and the cardiac CTA showed a small amount of plaque just above and proximal to the stent of the circumflex, but the stent of the circumflex was widely patent. There was some soft and fibrocalcified plaque in the distal left main extending into the LAD and circumflex but of only minor degree. There was moderate fibrocalcific plaque of the mid to

distal left anterior descending with stenosis of 50 to 60% and nothing in the right coronary artery. These findings are almost identical to what we saw on the cardiac cath where there was no flow-limiting disease...

...Current medications include [REDACTED] once a day; [REDACTED] once daily; simvastatin [REDACTED] once daily; [REDACTED] twice daily; [REDACTED] for p.r.n. use, which he uses liberally; and a [REDACTED] g every day...

...My impression is that both cardiac cath and cardiac CT scan did not show severe obstructive coronary disease. His chest discomfort could represent coronary spasm on top of the minor coronary lesion or it may represent esophageal pain. I have recommended that he give himself a trial of [REDACTED] b.i.d. for two weeks and then [REDACTED] once a day thereafter to see whether the chest discomfort goes away. His wife has also asked me to send a letter to Social Security, Medicare, and a series of other organizations to state that he can no longer work. I need to know what the limitations are on the request before stating he cannot work. He certainly is still having symptoms of whatever type. He has looked around for work and no one is hiring right now, but I don't know if I can tell them with honesty that he is totally disabled. Certainly I will be curious to see how he responds to the [REDACTED]. I have asked him to see me back in the office in six months...(Client Exhibit A, pgs 2 and 3).

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

(11) Claimant's past relevant work includes well drilling and trucking but he has remained unemployed since his cardiac hospitalization (Department Exhibit #1, pgs 51 and 56).

(12) Claimant also has been diagnosed with high blood pressure (HBP) and high cholesterol (HCL), both adequately controlled with current prescription medications (Client Exhibit A, pgs 6 and 12).

(13) Additionally, claimant is now taking over-the-counter [REDACTED] as needed for intermittent heartburn/chest pain symptoms (Department Exhibit #1, pg 40).

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

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

...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).

...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).

...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).

...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 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.

...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).

...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).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and

other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

Additionally, Social Security Ruling 96-4 p (SSR 96-4 p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory finding show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Additionally, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant’s symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Claimant’s current prescription medication schedule appears fully capable of adequate symptom control as long as medication compliance is maintained. As such, claimant does not qualify for the MA coverage he seeks because he has not presented any objective medical records to establish the presence of a physical or mental condition, or combination of conditions, which would prevent employability for the required duration.

Put simply, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of unskilled jobs currently existing in the national economy, which is

the standard to be applied in disability determination cases. As such, claimant's June 20, 2008 MA application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA eligibility standards.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: March 11, 2010

Date Mailed: March 12, 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.

MBM/db

cc:

