

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: 2009-9073
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2009
Montcalm County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Tuesday, April 14, 2009. The claimant personally appeared and testified on his own behalf with his wife, [REDACTED] as a witness.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance?

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 July 11, 2008, the claimant applied for MA-P and retroactive MA-P to June 2008.

(2) On October 9, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of past relevant work per 20 CFR 416.920(E).

(3) On October 14, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On November 24, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On January 22, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to coronary artery disease and back pain. The claimant is 55 years old and has a high school education and a history of unskilled work. The claimant did not meet applicable Social Security Listings found in CFR 404, Subpart P. The claimant is capable of performing past work that is light work per 20 CFR 416.967(b).

(6) The claimant is a 56 year-old man whose date of birth is [REDACTED]. The claimant is 5' 11" tall and weighs 260 pounds. The claimant has gained 60 pounds in the past year but doesn't know why. The claimant has a high school diploma. The claimant stated that he was special education in reading and writing. The claimant stated that he cannot read and write or do basic math. The claimant was last employed as a supervisor in 2001. The claimant was previously employed as a maintenance worker.

(7) The claimant's alleged impairments are coronary artery disease and back pain.

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).

"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).

...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 record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

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).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[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).

...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).

...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).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this

section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since 2001. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means, 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant’s treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined in [REDACTED] and last examined on [REDACTED]. The claimant has a history of impairment and chief complaint of chest pain with stent placement. The claimant’s current diagnosis was ASHD, hyperlipidemia, and hypertension. The claimant’s height was 69” with a weight of 264 pounds and a blood pressure of 138/80. The claimant had a normal physical examination except the treating physician noted that the claimant was positive for chest pain, coronary artery disease, and myocardial infarction. (Department Exhibit 3)

The treating physician's clinical impression was the claimant was stable, but mentally limited in reading/writing where he is unable to read or write. The claimant can meet his needs in the home. (Department Exhibit 4)

On [REDACTED], the claimant's treating physician submitted a progress report based on evaluation of the claimant. The claimant had stenting of the anterior descending coronary artery, but because of continued chest pains he had a repeat heart catheterization approximately two weeks later, which demonstrated that a small diagonal was "jailed" by the stent, but the stent was widely patent and there were no fixed severe obstructions in any other vessels. It was felt that the small diagonal was the culprit responsible for his chest discomfort. The claimant stated that he continues to have chest discomfort. The treating specialist was uncertain as to whether this was a surface discomfort or if this was actually angina, where he does not have many of the typical characteristics. The claimant's blood pressure was slightly elevated at 134/90. The claimant was a pleasant, awake, alert, oriented, cheerful, cooperative, obese male in no apparent distress. The claimant's PMI was not deviated. The heart had regular rate and rhythm. S1 and S2 were normal. The treating specialist could not hear an S3, S4, or significant murmur. Muscular strength appeared normal. The claimant's gait was unremarkable. All four extremities were present. Peripheral pulses were full, equal, and synchronous. There were no carotid bruits. The treating specialist's impression was ASHD with chest pain, morbid obesity, hyperlipidemia—as goal according to recent blood tests, hypertension—borderline controlled. The treating specialist explained to the claimant that he certainly could have residual angina given that the diagonal has been "jailed" by the stent. The treating specialist felt that this vessel was too small to approach from an interventional standpoint. Therefore, medical therapy only at this time was recommended. (Department Exhibit 93-94)

On [REDACTED], the claimant had a left heart catheterization, bilateral selective coronary angiography and left ventriculogram in one view at [REDACTED]. The claimant tolerated the procedure well and there no were no complications. There was no evidence of in-stent restenosis, unstable angina from caged small diagonal branch, well preserved ejection fraction. (Department Exhibit 88-91)

On [REDACTED], the claimant was given a chest x-ray at [REDACTED] because of unstable angina and chest pain. The radiologist's impression was mild cardiomegaly without superimposed acute cardio pulmonary process. (Department Exhibit 98)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's admitting diagnosis was chest pain, coronary artery disease, Bell's Palsy, and hypertension. His discharge diagnosis was chest pain, coronary artery disease, Bell's Palsy, hypertension, and dyslipidemia. The claimant's condition on discharge was stable. The claimant underwent a cardiac catheterization for stenting to the LAD. (Department Exhibit 10 and 16-17)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant underwent two cardiac catheterizations in [REDACTED]. The claimant's treating physician on [REDACTED] listed him as stable with chest pain, coronary artery disease, and myocardial infarction but did not list any physical limitations for the claimant, but did state that the claimant was mentally limited in his reading and writing abilities, but could meet his needs in the home. An update from the claimant's treating heart specialist on [REDACTED] stated that the claimant continues to have chest discomfort, but had an otherwise normal physical examination except his blood pressure was slightly elevated. There was no surgical intervention recommended, but medical therapy was

recommended. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does have a driver's license and does drive, but does have a problem reading street signs. The claimant doesn't cook because he can't stand long. The claimant doesn't grocery shop because he can't stand long and he has shortness of breath. The claimant does not clean his own home, do any outside work, or have any hobbies. The claimant felt that his condition has worsened in the past year because he has had two stents placed in his heart and continues to have chest pain. The claimant stated that he does not have any mental impairment.

The claimant sleeps all day. He gets up between 6:00 to 7:00 a.m. He lies back down until 9:00 a.m. He gets up between 1:00 and 2:00 p.m. and watches TV. The claimant goes back to bed at 9:00 p.m.

The claimant felt that he could walk 40 feet. The longest he felt he could stand was 15 to 20 minutes. The longest he felt he could sit was 30 to 60 minutes. The heaviest weight he felt he could carry was 35 pounds. The claimant's level of pain on a scale of 1 to 10 without medication was a 9 that decreases to a 4 with medication.

The claimant does not and has never smoked, drank alcohol, or taken any illegal or illicit drugs. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any of his prior work. The claimant underwent two successful stent placements in [REDACTED]. The claimant was previously employed as a supervisor and maintenance worker, which are performed at the light to sedentary level and the claimant should be able to perform those job functions. Therefore, the claimant is disqualified from receiving disability at Step 4. The claimant is capable of performing his past relevant work at the light level.

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 that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant should be able to perform his past relevant work at the light to sedentary level. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 29, 2009

Date Mailed: July 29, 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.

CGF/vmc

cc:

