

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

[REDACTED]

Reg No. 200910265  
Issue No. 2009/4031  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: May 27, 2009  
Kalamazoo 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on May 27, 2009. Claimant personally appeared and testified.

**ISSUE**

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

**FINDINGS OF FACT**

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

1. Claimant is a 54-year-old male who applied for disability-based medical coverage (MA/retro-MA) and a monthly cash grant (SDA) on May 21, 2008 (at age 51), secondary to a four day hospitalization at [REDACTED] in February 2008 (Department Exhibit #1, pg 71).
2. If claimant's application had been approved the expenses associated with this hospitalization and subsequent treatment would have been covered by MA/retro-MA.
3. On October 15, 2008, the department denied claimant's application; consequently, he filed a timely hearing request disputing the denial, dated November 12, 2008 (Department Exhibit #1, pg 3).

4. Claimant's hearing was held by conference telephone on May 27, 2009 and he appeared in pro per (self represented).
5. Claimant moved in with his sister in [REDACTED] from [REDACTED] in 1992; he last worked at a local city cemetery and in general city maintenance jobs from 1992 until 2003, when he was laid-off due to downsizing.
6. Claimant has not been employed anywhere since then.
7. On May 21, 2008, claimant applied for disability-based benefits (MA/SDA) based on several impairments including heart issues, arthritis and the 2008 stroke which resulted in claimant's [REDACTED] hospitalization referenced in Finding of Fact #1 above; however, no stroke residuals have been shown (Department Exhibit #1, pgs 107-114).
8. One month after applying, specifically in June 2008, claimant underwent a cardiac stress test which revealed partially reversible anterior and lateral wall defects consistent with ischemia, but claimant's ejection fraction was good and no regional wall motion abnormalities were appreciated; consequently, a more sensitive diagnostic tool (cardiac catheterization) was used (Department Exhibit #1, pg 42).
9. The catheterization, done on June 4, 2008, showed no abnormalities and claimant's ejection fraction tested at 55% (normal) that day (Department Exhibit #1, pg 44).
10. Claimant has been diagnosed with high blood pressure and high cholesterol, both capable of good control and under complete control with claimant's current medications (e.g., [REDACTED] [REDACTED] [REDACTED]) (Department Exhibit #1, pg 42).
11. After the doctors at the department's State Hearing Review Team (SHRT) reviewed claimant's medical records prior to hearing, they concluded in relevant part:

...A denial to other work is established based on [claimant's] ability to perform light work as projected from the findings of a consultative examination of 09/08 (Department Exhibit #2).
12. This examination states claimant exhibited a normal gait, had no evidence of joint laxity/crepitation/effusion in any musculoskeletal areas and demonstrated normal bilateral grip strength/dexterity with minimal difficulty doing orthopedic maneuvers (Department Exhibit #1, pgs 10-14).

13. Subsequently, claimant's treating doctor submitted a report stating claimant could occasionally lift ten pounds but no more; this finding is inconsistent with the consultative evaluation and not supported by the objective test results submitted up to claimant's hearing date (Client Exhibit A, pgs 1 and 2).
14. Claimant also submitted a medical report stating he was treated in the Emergency Room (ER) for a 'bout of pneumonia in June 2008, where the standard antibiotics were prescribed and no heavy exertion during the recuperative phase was recommended (Client Exhibit B, pgs 1-5).
15. Claimant also filed a Social Security Administration (SSA) disability application on June 2, 2008, which was denied with an appeal pending as recently as September 21, 2010, according to a computerized cross-check (SOLQ) of the SSA's records received while this MA/SDA appeal was pending.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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.

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).

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.

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).

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).

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 i15B015

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).

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).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been gainfully employed since 2003. However, it must be noted his lay-off at that time was not related to any health issues, and thus, it is irrelevant to the disability determination herein (See Finding of Fact #5 above).

At Step 2, claimant's diagnosed physical impairments (arthritis, high blood pressure, high cholesterol and past stroke) have left him with some minimal range of motion limitations and self-reported pain. However, it must be noted no severe mental impairments have been shown, and claimant's degenerative arthritis appears fully capable of adequate pain management with standard prescription medications, if claimant chooses to use them.

Furthermore, it must be noted the law does not require an application 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. Nevertheless, claimant's combined impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence of the record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record supports claimant's contention he cannot return to his former city maintenance job because that type of work included heavy and medium exertional activities which would be likely to exacerbate claimant's pain and/or cause further injury. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. At the time claimant filed his disputed MA/SDA application in 2008 he was 51 years old. Additionally, he had a high school education and a history consistent with unskilled heavy/medium exertional work activity. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retained the residual functional capacity to perform at least light work as that term is defined above when he filed his May 21, 2008 application. Therefore, this Administrative Law Judge concurs with the department's State Hearing Review Team (SHRT) doctors in their opinion of February 4, 2009, which states claimant could have returned to light work at that time, as directed by

Medical-Vocational Rule 202.13. Claimant may re-apply at any time if more recent objective medical evidence demonstrates a disabling condition.

**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 May 21, 2008 MA/SDA application based on a finding he did not meet the eligibility standards necessary to qualify for the benefits sought.

Accordingly, the department's application denial action is AFFIRMED.

/S/  
Marlene B. Magyar  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: November 22, 2010

Date Mailed: November 23, 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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