

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: 2009-17587

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 18, 2009

Gratiot County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 June 18, 2009. Claimant personally appeared and testified along with Renal Social Worker from [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 September 5, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On February 4, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work.

(3) On February 9, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On February 20, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 16, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating the claimant was capable of performing other work.

(6) Claimant presented additional medical evidence following the hearing that was forwarded to SHRT for additional review. On June 29, 2009 SHRT approved claimant's MA application effective January 1, 2009. SHRT noted that prior to January, 2009, when claimant suffered renal failure, there is no evidence of a disabling impairment.

(7) Claimant is a 48 year old man who is currently on dialysis three times per week due to renal failure. Claimant's impairments as of his September, 2008 MA and SDA application included diabetes mellitus type II, hypertension, coronary artery disease, congestive heart failure and obesity.

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).

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

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 does 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, claimant is not engaged in substantial gainful activity and medical records show that he had not worked since 2004. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for a duration of at least 12 months.

The objective medical evidence on the record consists of claimant's medical records since 2006. September, 2006 doctor's notes states that the claimant is a 46 year old male who is morbidly obese, he has had coronary bypass with stenting, he has CAD, he is currently on multiple medications and is out of his insulin, and has a retinal hemorrhage. Claimant's sugar levels are unacceptable, and he is a little bit anemic. November 9, 2006 diabetes education assessment notes that the claimant does not eat or test his blood sugar regularly but is doing better on this, and that he takes his meds when he can afford them. Possible diabetic neuropathy

is noted, as foot exam reveals tingling and shooting pains in feet and numbness in his hands and feet. March, 2008 doctor's note states that the claimant's weight is 306 lbs., he has significant coronary disease, is on many medications but does not take care of himself properly.

Independent medical evaluation of January 10, 2009 states that the claimant has a history of obesity, hypertension, diabetes mellitus type II, at one point insulin dependent, coronary artery disease and CHF. Claimant had fluid retention in the body with swelling in the feet and shortness of breath, and underwent a cardiac catheterization and coronary intervention in the right coronary artery in 2003. Claimant was also diagnosed with CHF at that point, and prescribed diuretics, anti hypertensives, and anti-anginal medications. Claimant was then divorced and lost his health insurance, and stopped taking all of his medications. Claimant gets [REDACTED] and takes it only if it gets to the point where he has to take it because the swelling is getting too bad, but does not take the rest of his medications any more, including his insulin. Claimant does not know how his sugars are running, or how his blood pressure is running. He has some sharp, left sided chest pain that stays for about five minutes once in a while, and if he rests it gets better in about five minutes. His swelling in the feet is 2+ all the time, and once in a while his scrotal edema also sets in, at which time he takes [REDACTED] and it gets better. Claimant does not have health insurance to take care of his conditions. Claimant was 71 inches tall and weighed 310 lbs., with blood pressure being 170/100. Impression was that of coronary artery disease, status post right coronary artery intervention with stent insertion, intermittent chest pain with typical and atypical features for angina, hypertension, uncontrolled, secondary to non-compliance of medications, diabetes mellitus type II, insulin dependent but not on any therapy right now, congestive heart failure, low back pain, history of neck pain status post laminectomy, and severe obesity.

Claimant was taken to the hospital on January 22, 2009 after he had a seizure witnessed by his son. Report of consultation states that the claimant had unfortunately not received any medical attention the last couple of years because of lack of insurance and he has not used any of his insulin. MRI of claimant's brain revealed a small infarct and he was put on acute treatment for that. Claimant was also found to have acute renal failure which progressed very aggressively to reach chronic renal failure and determination he needed dialysis. Claimant continues to be on dialysis three times per week as of the date of the hearing.

Medical evidence has clearly established that claimant has a severe impairment (or combination of impairments) that has lasted more than 12 months. Claimant has therefore met his burden of proof at Step 2.

The analysis proceeds to Step 3 where 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 support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment, that of 6.02A. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. It is apparent from claimant's medical record that he has had a multitude of physical problems for a period of several years. The fact that the claimant had no medical insurance and no means of paying for medical treatment or medications cannot be held against him and termed to be refusal to comply with medications or medical treatment. Claimant's renal failure in January, 2009 which has since required dialysis resulted from renal disease developed over a period of time prior to such failure. Claimant has suffered from fatigue, shortness of breath, hypertension, congestive heart failure and retention of fluid in his legs, feet and abdomen area for which he has taken [REDACTED] in

the past. Accordingly, claimant can be found to be disabled based upon medical evidence alone prior to January, 2009, date approved by SHRT. 20 CFR 416.920(d). No further analysis is needed.

The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant meets the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant meets the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined that the claimant was not disabled for MA and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED. Department shall:

- (1) Process claimant's disputed September 5, 2008 MA and SDA application.
- (2) Grant the claimant any and all MA and SDA benefits he is eligible to receive (i.e. meets financial and non-financial eligibility requirements) based on September 5, 2008 application.

- (3) Notify the claimant of this determination in writing.

SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 1, 2009

Date Mailed: July 1, 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.

IR/db

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