

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: 2009-25111
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 28, 2009
Wayne 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, a telephone hearing was held on July 28, 2009. Claimant personally appeared and testified.

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 March 9, 2009, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits for the month of February 2009.
- (2) On March 13, 2009, the Medical Review Team denied claimant's application stating that claimant's impairments lacked duration.

(3) On March 18, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 1, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 16, 2009, the State Hearing Review Team again denied claimant's application stating that it needed additional medical information.

(6) The hearing was held on July 28, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was submitted and sent to the State Hearing Review Team on December 8, 2009.

(8) On December 14, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical Vocational Rule 202.20 and that the claimant has a history of a myocardial infarction in [REDACTED] and successful stenting times two in [REDACTED]. He has a history of alcohol abuse and an ejection fraction of 30% per cardiac catheterization (PA6). His condition improved with treatment and is currently stable. He specifically does not meet Listing 4.02B or 12.09.

(9) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 5' 3" tall and weighs 145 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills. Claimant is from [REDACTED] and is not a United States citizen.

(10) Claimant last worked February 16, 2009 for [REDACTED] as a cab driver and was self-employed.

(11) Claimant alleges as disabling impairments: a heart attack in [REDACTED] and a heart attack in [REDACTED].

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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, claimant is not engaged in substantial gainful activity and has not worked since February 2009. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence in the record indicates that in a [REDACTED] assessment indicates that on examination the claimant was alert and cooperative. The claimant weighed 143 pounds. Blood pressure was 130/66. Height was 5' 3" tall. Vision without glasses was 20/40 on the left and 20/50 on the right and 20/30 bilaterally. Clinically, the claimant was not jaundiced. His gait was normal. The claimant was able to get on and off the examination table. The claimant could raise both arms above head level. His HEENT was normocephalic. External eye movements were intact. Pupils were equal, regular, and reactive to light and accommodation. Fundus was intact. ENT was benign. Neck was supple. No thyromegaly. No venous engorgement. Trachea was central. No carotid bruit. The chest moved normally on either

side. Respiratory movements were normal. The chest was clear to auscultation and percussion. No rhonchi or rales were noted. In the cardiovascular, the heart size was normal. There was soft systolic murmur, II-VI. JVD was not raised. Air entry was equal. No adventitious sounds. Trachea was midline. The abdomen was soft, no masses felt. Bowel sounds were normal. No evidence of hernia. Spleen was not palpable. No ascites. In the bones and joints, the straight leg raising was equal bilaterally. All peripheral pulses were equal and good bilaterally. There was no wasting of muscles. The hand grip was equal. In the nervous system cranial nerves II-XII were grossly intact. No gouty deformities or nodules noted. Sensory: touch, pinprick, and sensation were normal. Plantar was flexor bilaterally. Cerebellar function was normal. Motor strength was equal bilaterally. The deep tendon reflexes were 2+ in the upper and lower extremities. Heel-to-knee and finger-to-finger, finger-to-nose testing was normal. The gait was normal. No wasting of muscles. Speech and memory appeared to be normal. Orientation was normal. The claimant's general health was good. No leg ulcers. The conclusion was that claimant suffers with hypertension, hyperlipidemia, status post coronary artery surgery where he had stents put in, previous history of congestive heart failure and possible myocardial infarction, history of ischemic cardiomyopathy, and previous alcoholism. In general, the claimant could not do any job involving pushing, pulling, lifting, climbing, prolonged standing, or carrying anything heavy. He appeared to be somewhat stable and his prognosis was fair. (Exhibit A1-A3)

Claimant was admitted to the hospital [REDACTED] with acutely decompensated congestive heart failure. He had JVD, diffuse wheezes, and lower extremity edema on exam. He was diuresed with IV Lasix and was discharged home on [REDACTED]. He also received a stent and was continued on Plavix and Lipitor. (p. A2)

Claimant was admitted to the hospital February 18, 2009 and discharged February 27, 2009 because he was found to hypoxic and tachypneic with decreased breath sounds. He was found to have 90-99% stenosis in the mid circumflex and mid RCA. He was diagnosed with cardiogenic shock and a myocardial infarction. He was treated with LAD stent with an ejection fraction of 30% and apical thrombus, presented with CP and was found to be NSTEMI with congestive heart failure with bare metal stent, PA catheter, IABP. Cath showed patent LAD with 99% Cx and RCA arteries. He was educated against drugs, smoking, and alcohol.

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 the duration of at least 12 months. Based upon the objective clinical medical evidence in the record, claimant did suffer from a severely restrictive physical impairment. However, his condition has improved and, therefore, his impairments do not meet duration. Claimant testified on the record that he does not have any mental impairment. Claimant testified that he can walk 2-3 blocks, stand for an hour, and sit for an hour. Claimant testified he can squat a little and that he can bend at the waist sometimes. Claimant is able to shower and dress himself, tie his shoes, and touch his toes. Claimant stated the heaviest weight he can carry is 5 pounds. Claimant testified that he is right-handed and that his left arm is painful and his hand shakes. Claimant testified that his level of pain on a scale from 1 to 10 without medication is above a 10 and with medication is a 7/8. Claimant testified that he does smoke two cigarettes a day and his doctor has told him to quit. Claimant testified that his legs and feet are fine, but he does have some back pain. Claimant also testified that in a typical day he doesn't do anything. He sits on the porch and plays with his niece and nephew.

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. Claimant's past relevant work was sedentary as a cab driver. A cab driver does not require strenuous physical exertion and there is no medical evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

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).

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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of alcohol and tobacco abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability. It should be noted that claimant does continue to smoke cigarettes despite the fact that he has had a heart attack and his doctor has told him to quit.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Claimant did testify that he does receive some relief from his pain medication. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from

receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a younger individual (age 41), with a high school education and an unskilled work history who is limited to light work is not considered disabled.

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 claimant should be able to perform a wide range of light or sedentary work even with his impairments. 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 23, 2010

Date Mailed: March 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.

2009-25111/LYL

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

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