

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

IN THE MATTER:

[REDACTED]

Reg No. 200925287
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 15, 2009
Lapeer County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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, an in-person hearing was held on September 15, 2009. Claimant was represented by [REDACTED]

ISSUE

Whether claimant has established disability for Medical Assistance (MA).

FINDINGS OF FACT

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

1. January 20, 2009, claimant applied for MA and retroactive MA.
2. February 3, 2009, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.
3. February 6, 2009, the department sent claimant written notice that the application was denied.
4. May 5, 2009, the department received claimant's timely request for hearing.
5. June 17, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

6. September 15, 2009, the in-person hearing was held. Prior to the close of the record, claimant requested the record be left open for additional medical evidence. Claimant waived the right to a timely hearing decision. April 30, 2010, after review of medical evidence, the SHRT again denied claimant's application. SHRT Decision, 4-30-10.
7. Claimant asserts disability based on impairments caused by bipolar disorder, depression, diabetic neuropathy, and bad back.
8. Claimant testified at hearing. Claimant is 29 years old, 5'8" tall, and weighs 267 pounds. Claimant completed ninth grade and a GED. Claimant has poor reading, writing, and math skills. Claimant does not have a driver's license. Claimant cares for his needs at home.
9. Claimant's past relevant employment has been in general unskilled labor.
10. October 6, 2008, claimant underwent bilateral L5 laminectomy and superior S1 laminotomy; L5-S1 pedicle screw and rod of fixation; L5-S1 posterolateral fusion and bone graft; right iliac crest bone marrow aspiration. Department Exhibit A, pgs 17-18.
11. In March 2009, claimant underwent an independent medical examination and a narrative report was prepared. Physical examination revealed an exam within normal limits with the exception of moderate restriction of range of motion of the lumbar spine and slow gait. Straight leg raise on right was positive. Doctor indicates diagnoses of diabetes type 2, diabetic neuropathy, hypertension with hypercholesterolemia, lumbar radiculopathy, status post surgery, GERD, depression and anxiety. Doctor opines that claimant is not able to work due to moderate to severe lower back pain which is worse in bending, climbing stairs and ladders, and overreaching with both arms. Department Exhibit A, pgs 26-34.
12. October 24, 2009, claimant presented to emergency room due to dizziness and insomnia. Physical exam was performed that revealed hypertensive urgency, uncontrolled diabetes mellitus type 2, dizziness and lightheadedness with area of frontal lobe edema on CT scan, and morbid obesity. Physical exam revealed full range of motion in the cervical spine and negative Spurling's maneuver. Extremities had no edema. Chest was clear to auscultation. There were normal heart sounds. Abdomen was soft with bowel sounds present. Extremities had no pitting edema and peripheral pulses were intact. Cranial nerves 2-12 were grossly intact including visual fields and ocular fundi, eye movement, palate

elevation, uvula, and tongue. Motor exam revealed normal muscle, bulk, and tone with normal strength. Deep tendon reflexes were 2+ or 4+ in the upper and lower extremities and the Plantar response was flexor bilaterally. Sensation was intact to touch, position, vibration and gait was independent, however, patient was noted to be mildly unsteady with tendency to fall if unsupported. Doctor's impression was that claimant may have ischemic infarct. Claimant Exhibit A, pgs 9-14.

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).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, claimant is post lumbar spinal fusion. He continues to complain of severe low back pain. In October 2009, claimant underwent a period of dizziness and insomnia. Objective medical testing revealed claimant to have some edema in the frontal white matter of the brain. Physical exam appeared to be within normal limits with the exception of the tendency to get dizzy and fall if not supported. Claimant also has diabetes type 2, diabetic neuropathy, lumbar radiculopathy, GERD, and depression and anxiety. The record does not contain any mental health treatment records. Finding of Fact 10-12; Department Exhibit A; Claimant Exhibit A.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent all employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's conditions do not meet or equal any Social Security Listing.

At Step 4, claimant's past relevant employment has been in general unskilled labor. See discussion at Step 2 above. Finding of Fact 9-12.

At Step 4, the objective medical evidence of record appears to establish that claimant would have difficulty performing the duties required by his past relevant employment as he was required to do a lot of standing and walking. Accordingly, claimant is not disqualified from receiving disability at Step 4.

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).

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).

At Step 5, see discussion at Steps 2 and 4 above. Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the functional capacity to perform at least sedentary, unskilled work activities. Considering claimant's vocational profile (younger individual, limited education, and history of unskilled work) and relying on Vocational Rule 201.24, claimant is not disabled. Accordingly, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Accordingly, claimant does not meet the disability requirements for Medical Assistance based on disability.. The department properly denied his application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/S/
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 29, 2010

Date Mailed: November 30, 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 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.

JAB/ db

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