

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: 2009-25753
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2009
Baraga 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 September 9, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his mother [REDACTED] and his father [REDACTED]. Claimant was represented by [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive MA 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 January 12, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On March 9, 2009, the Medical Review Team (MRT) approved claimant's SDA application with a review date of July 2009. On March 20, 2009 MRT denied claimant's MA application stating that claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On March 30, 2009, the department caseworker sent claimant notice that his MA application was denied.

(4) On April 28, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 12, 2009, the State Hearing Review Team (SHRT) also denied claimant's application citing insufficient evidence and suggesting additional medical evidence be obtained.

(6) Department and claimant's representative submitted additional evidence in December, 2009 that was forwarded to SHRT for review. On January 6, 2010 SHRT determined that the claimant was not disabled as he was capable of performing other work, namely sedentary work per 20 CFR 416.967(a) and Vocational Rule 201.27.

(7) Claimant is a 29 year old man whose birthday is November 18, 1980. Claimant is 6' tall and weighs 165 lbs. Claimant completed high school and 2 years of college in construction, and can read, write and do basic math.

(8) Claimant states that he last worked in 2006 in construction work as seasonal help for 4 months. Claimant also worked for Department of Natural Resources as a crew leader of a camp, in a state park in maintenance, and in seasonal construction jobs.

(9) Claimant lives with his parents and does odd jobs for cash. Claimant has a driver's license and drives to the store which is 8-10 miles from his house once every two days. Claimant does no physical work and watches TV, reads, and uses the Internet to pass the time.

(10) Claimant alleges as disabling impairments ischemic cardiomyopathy and possible Marfan syndrome.

(11) Claimant has applied for Social Security disability and been denied, and is appealing the denial. Claimant's SDA was closed in September, 2009 as MRT denied continuing disability at review.

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).

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 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 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 testified that he has not worked since year 2006 except of odd jobs. 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 or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a hospital visit report of January 8, 2009 due to the claimant having episodes of fast heartbeat and shortness of breath since January 2, 2009. Assessment was that of atrial fibrillation with rapid ventricular response and left bundle branch block, and tachycardia for which close follow in the office on blood thinning agents was recommended. Claimant could not be evaluated further by admitting him to the hospital due to no insurance.

On January 13, 2009 claimant was evaluated by a cardiologist who notes that the claimant's echocardiogram showed severe cardiomyopathy with ejection fraction in the range of 10-20% when seen on January 8, 2009. Claimant was started on Coumadin, Lisinopril, Tenormin and Lanoxin, but then developed a flu-like illness with nausea and vomiting, and feeling of impending doom. Claimant stated that he continues to feel palpitations on a daily basis, and any type of activity including activities of daily living will leave him quite winded. Claimant's alcohol use was somewhat of concern, as he stated he is a binge drinker drinking a 12-pack on weekends. Claimant admitted to marijuana use, but denied any other type of drug use. On examination claimant's pulse was 120 and irregular and is consistent with his atrial fibrillation. Claimant's cardiac exam is very rapid but with no appreciative murmur, and he has no pedal edema. Cardiologist summarized that the claimant has atrial fibrillation with rapid ventricular response and also severe cardiomyopathy with significant reduction in LV function. Cause of this is unclear at this time, and claimant was told to abstain from alcohol use. Hospitalization was recommended and claimant agreed to it.

Claimant was admitted to the hospital on January 13, 2009 and discharged on January 16, 2009. Claimant was started on an IV to control his heart rate and did start to feel improved, had a little bit more energy and was not as nauseated. It was noted that the claimant does meet criteria for permanent disability, and if his ejection fraction does not improve over the next 9 months, he will likely be a candidate for cardiac transplant surgery.

Medical Examination Report of January 23, 2009 indicates that the claimant has heart failure and is at risk for sudden death. Claimant's ejection fraction is 10 to 15%. Claimant's condition is stable but he has significant physical limitations.

Claimant was again seen by a cardiologist on February 18, 2009. It is noted that clinically he has done reasonably well. Claimant gets a little lightheaded when he gets up occasionally, and a little weak in the legs, and this could be a low blood pressure or a low pulse but the doctor is not sure. Claimant has had no shortness of breath, has been very careful with activity, and has had absolutely no alcohol. He has had a little bit of nosebleed on the Coumadin, but it is tolerated, and he has had no feelings of palpitations whatsoever. Claimant's blood pressure was 128/70 and pulse 56 and very regular. When the claimant lies flat for an echo, his heart rate drops to about 40 in sinus bradycardia. The lungs are clear and the cardiac examination shows good heart tones, no concerning murmur is heard, and the extremities show no edema. In summary, the claimant's cardiomyopathy may be alcohol related, but he has absolutely abstained from alcohol and his heart failure is surely improved with converting to the atrial fibrillation rhythm. Claimant does have a slow heart rate but he is tolerating it, and will be allowed to exercise a little more. Claimant's pulmonary pressures are very high and this is bothersome, and too much increase in activity at this time is not recommended. Claimant is still in the situation of physical disability from any heavy exertion and this could become permanent.

Echocardiogram Report of September 1, 2009 conclusion is that of sinus bradycardia during the study, dilated left ventricle with ejection fraction in the range of 35%, moderate to severely reduced, global hypokinesis, mild aortic insufficiency and no aortic stenosis, trivial to mild mitral insufficiency, and mild to moderate dilated aortic root and proximal ascending aorta.

Cardiologist's report of the same date for a followup visit states that the claimant has had slow improvement of his stamina, which is reasonable, and that he has done a little bit of kayaking. Claimant does moderate his activities very carefully and overall has been pretty compliant. Claimant's blood pressure was 122/70 and pulse 54 and regular, his lungs were clear

and the cardiac examination unremarkable with a regular rhythm. Extremities showed no edema. In summary, claimant has nonischemic cardiomyopathy of unknown cause. Alcohol is possibly the cause, as no other obvious etiology is seen at this time. Claimant has had atrial fibrillation but it has resolved in sinus rhythm and with control of his heart failure condition has not recurred. Claimant has clinically Marfan's syndrome, some dilatation of the ascending aorta. Claimant should keep away from any type of heavy lifting, and moderate aerobic exercise would be best. If the aorta dilates further claimant would be a candidate for root replacement in the future. Claimant and the doctor talked about retraining to get a job that does not require physical labor, as he could get into a work situation eventually where he cannot do any physical labor, and is disabled from any type of work with strenuous activity required probably on a long term basis.

Claimant was at the hospital on December 2, 2009 stating that he can hardly do anything in regards to work as he becomes very short of breath and has problems with heart pounding. Claimant also stated that he has been noticing an increased problem with migraines and his blood pressure is elevated since being off the Amiodarone. Claimant has been followed at the University of Michigan since January, 2009. His medications were reviewed and he is taking them appropriately and denies any side effects. Claimant had regular bradycardia without murmur, rub, or extra sounds, and S1 and S2 were normal. Claimant's extremities were without lesion, edema or deformity.

December 3, 2009 letter from claimant's doctor indicates that he can do very little in the way of activity before becoming short of breath and having palpitations and chest pain, and that he may be able to do a sedentary job. Claimant is on the borderline of needing a pacemaker

defibrillator and is being monitored for this, but require a cardiac transplant in the future if his condition deteriorates.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. This Administrative Law Judge finds that the medical record is sufficient to establish that claimant has a severely restrictive physical impairment that has lasted or is expected to last 12 months or more. Claimant has 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 4.02. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). No further analysis is needed.

In conclusion, the claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges 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. BEM, Item 261, page 1. Because the claimant does meet 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 does meet 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 denied claimant's MA and retro MA application, and also improperly terminated his SDA benefits in September, 2009.

Accordingly, department's action is REVERSED. Department shall:

1. Process claimant's disputed January 12, 2009 MA and retro MA application and grant him any and all such benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Reinstate claimant's SDA benefits back to September, 2009 closure and issue him any such retroactive benefits he is found eligible for.
3. Notify the claimant of department's action.
4. Review claimant's continuing eligibility in May, 2011, at which time updated medical information is to be obtained.

SO ORDERED.

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


Date Signed: April 13, 2010

Date Mailed: April 13, 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.

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