

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: 2009-26012
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 6, 2009
Iosco 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 August 6, 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 MA benefits?

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 February 14, 2009, claimant filed an application for Medical Assistance, retro MA benefits and State Disability Assistance (SDA) alleging disability.

(2) On April 10, 2009, the Medical Review Team denied claimant's MA application stating that claimant's impairment(s) lack duration of 12 months per 20 CFR 416.909.

Claimant's SDA application was approved with a medical review date of August, 2009.

(3) On April 23, 2009, the department caseworker sent claimant notice that his MA application was denied.

(4) On April 23, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On June 29, 2009, the State Hearing Review Team (SHRT) also denied claimant's application stating impairment lacks duration per 20 CFR 416.909.

(6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On October 1, 2009 SHRT once again determined that the claimant was not disabled, as the medical evidence of record does not document a mental/physical impairment(s) that significantly limit his ability to perform basic work activities.

(7) Claimant is a 52 year old man whose birthday is May 15, 1957. Claimant is 6' tall and weighs 188 lbs. Claimant has a GED and training as a truck driver and diesel mechanic. Claimant can read, write and do basic math.

(8) Claimant states that he last worked in 2008 as self-employed construction worker, then suffered deep vein thrombosis, went back to work but had more medical problems and had to stop working. Claimant has also worked on a garbage truck for a little over a year up to 2006, job he quit due to medical problems.

(9) Claimant lives in a trailer on private property, receives SDA and food stamps, and states his friends helped him also financially. Claimant does not have a driver's license due to a

DUI he had 10 years ago. Claimant smokes less than a pack of cigarettes per day, drinks a 6 pack of beer per week, and smokes marijuana for pain when he can get it.

(10) Claimant alleges as disabling impairments: lung and heart problems, back pain, hepatitis B and C, COPD, anxiety, depression, and anxiety.

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 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 2008. 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 May 12, 2007 hospital records indicating that the claimant with no known cardiac disease had 3 episodes over the past several weeks of chest discomfort, which has lasted hours at a time. Claimant's past medical history includes Hepatitis C, depression, prior intravenous drug use, and prior alcoholism. Claimant is a smoker and had smoked over a pack a day his entire life. Claimant smokes marijuana as well, is a recovering alcoholic but has a beer here and there. Claimant had quit his previous IV drug use. Diagnostic cardiac catheterization was performed with a conclusion of triple vessel coronary artery disease with 80% stenosis involving the diagonal branch which is a small to medium vessel, mild disease involving the mid and distal right coronary artery, and mild stenosis involving the mid left anterior descending artery. Medical therapy with intensified risk factor modification was recommended. If the claimant has recurrence of angina then angioplasty and stenting could be considered to the diagonal branch.

Claimant had an MRI of the lumbar spine in May, 2007 which showed only minimal L5-S1 degenerative changes and no disk herniation, central canal or foraminal stenosis.

Claimant had a needle biopsy of the right upper lobe lung mass on May 15, 2007 indicating a good chance that this represented a rounded area of pneumonia. Claimant's bilirubin was noted to be within normal limits at 0.1.

Claimant was examined at [REDACTED], on [REDACTED], due to having a chest abnormality for about a year. Claimant had been advised previously a resection could be considered, but refused and has had a couple of unsuccessful efforts at tissue diagnosis with needle biopsy. Claimant still smokes cigarettes, and other comorbid conditions include atherosclerotic heart disease, arthritis, hypercholesterolemia, and what appears to be a history of alcoholism. A CAT scan revealed a 3.9 cm mass in the medial

aspect of claimant's right upper lobe. PET scan shows nonspecific uptake consistent with either inflammatory or malignant process. Claimant was to return in a year to check if the mass has grown.

Claimant was in the emergency room on January 29, 2009 and diagnosed with a deep vein thrombosis in his leg, after undergoing a left lower extremity venous Doppler. Claimant was discharged with instructions to keep his legs elevated, not do any physical work, and to start on a blood-thinning medication.

Claimant was admitted to the hospital on February 9, 2009 with a recurrent left leg deep vein thrombosis untreated. Claimant had failed outpatient therapy. Claimant had completed his medication therapy given to him on January 29, 2009 on February 6, 2009, but over the course of the weekend his leg pain became much worse and he was readmitted to the emergency room. Claimant had an extensive deep vein thrombosis of his deep veins above the knee and he was subtherapeutic as far as his treatment levels. Claimant was given medication on a twice daily basis. He was discharged on February 13, 2009 with a diagnosis of extensive deep vein thrombosis of his left leg proximally, history of chronic hepatitis, known coronary disease, chronic pain syndrome, and chronic scarring and fibrosis of his right upper lung according to the chest x-ray.

In September, 2008 claimant's motor function and sensation was normal. In January, 2009 claimant's neurological examination was normal but his gait was limited by pain.

Claimant was seen by [REDACTED] in [REDACTED]. Assessment indicates that the claimant is in a situational depression due to finances and living situation (claimant sleeps in a camper), and feels frustrated by his medical issues that prevent him from working. Claimant is an occasional beer drinker and smokes marijuana on a regular basis. Claimant's

affect was appropriate, he was cooperative, related well and had good eye contact. Claimant's mood was depressed. Claimant did not have any perceptual distortions, his thought process was relevant, spontaneous and with no formal disorder. Claimant was fully oriented, had some memory impairment due to previous head trauma or use of marijuana, but his concentration was adequate. Claimant had no suicidal ideation, and although he stated he wanted to kill his neighbor previously explained he was just frustrated and had no intent to hurt him. Claimant was diagnosed with adjustment disorder with depressed mood.

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. Analysis therefore continues to Step 3.

At Step 3 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 not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge must consider claimant's ability to perform past relevant work. Claimant's past relevant work was doing construction work and labor type jobs he could no longer perform due to thrombosis. Finding that the claimant is unable to perform work which he has engaged in in the past can therefore be reached and the claimant is not denied from receiving disability 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 other 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).

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).

Claimant has submitted sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment. While the medical record concerning claimant's deep vein thrombosis is from February, 2009, claimant was still suffering from problems with his leg at the time of the hearing. Claimant testified that he cannot sit or stand for a period of time because his leg swells up, and that he also cannot walk long distances. Department's representative described the claimant as using a cane, viewed his leg and stated it was double the size and looks "like it is going to pop". This observation is persuasive in concluding that the claimant is still having serious problems and that his deep vein thrombosis is not totally resolved. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record combined with DHS staff testimony does establish that claimant has no residual functional capacity to perform other work, and that this condition has lasted or is expected to last for a period of 12 months or more. Claimant is therefore not disqualified from receiving disability at Step 5.

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.

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.

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

1. Process claimant's disputed February 14, 2009 MA and retro MA application.
2. Grant the claimant any MA benefits he is otherwise eligible for (i.e. meets non-financial and financial eligibility criteria).
3. Notify the claimant in writing of department's determination.
4. Department is to review claimant's continuing medical eligibility in May, 2011, at which time updated medical records need to be obtained.
5. Claimant is advised that he needs to comply with medical treatment advised by his doctor(s).

SO ORDERED.

/s/

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

Date Signed: April 5, 2010

Date Mailed: April 6, 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.

cc:

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