

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: 2009-28394
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 2, 2009
Kent 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 2, 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 December 29, 2009, claimant filed an application for Medical Assistance benefits alleging disability.

(2) On March 24, 2009, the Medical Review Team denied claimant's application stating that claimant's impairment lacks duration of 12 months per 20 CRF 416.909.

(3) On April 1, 2009, the department caseworker sent claimant notice that his application was denied.

(4) On May 27, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On July 16, 2009, the State Hearing Review Team (SHRT) also denied claimant's application due to insufficient evidence. SHRT requested that the department obtain additional medical records.

(6) Additional medical information was received and sent to SHRT for review. On March 17, 2009 SHRT denied claimant's application stating his impairment lacks duration of 12 months, and also stating he was capable of performing past work.

(7) Claimant is a 64 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 175 lbs. Claimant has an associate degree and can read, write and do basic math.

(8) Claimant states that he last worked in 2004 as an underwriter for an insurance company inspecting commercial property. Claimant has been on RSDI due to early retirement.

(9) Claimant lives alone in a townhouse he owns, has a driver's license and drives couple of times per week to run errands and buy groceries, cooks and cleans his house.

(10) Claimant alleges as disabling impairments vocal cord cancer.

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 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 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 December 18, 2008 consultation report from an oncologist due to claimant having apparent Stage I glottic larynx cancer well-differentiated squamous cell carcinoma. Claimant had a one year history of hoarseness and a long history of tobacco use, and is currently trying to quit. Claimant is described as an insurance broker. Claimant’s cancer appeared to be very localized and early staged, but further tests of the neck to assess for local extension or nodal metastasis were recommended prior to deciding on treatment.

On January 13, 2009 claimant underwent surgery to remove a tumor from his vocal cords. Claimant also had left tongue base mass that was biopsied. Claimant tolerated the procedure well. Tongue mass was negative for malignancy.

March 5, 2009 medical report indicates that the claimant was admitted to the hospital from February 23, 2009 through March 5, 2009 due to sudden onset of severe difficulty breathing, fever and hypotension. It was noted that the claimant has been undergoing radiotherapy for vocal cord cancer following his January, 2009 surgery. Claimant was diagnosed with left lower lobe pneumonia with sepsis. Claimant required management in the intensive care unit for the first 4 days of his hospital stay due to sepsis with associated shock. Claimant eventually recovered and was discharged home in stable condition, advised not to smoke ever again or drink alcohol, and to follow a normal diet and engage in activity as able. Claimant also completed his radiotherapy treatment course while in the hospital.

April 7, 2009 final hospital report for a follow up and claimant's multiple concerns indicates that the claimant wants to be taken off his oxygen. Claimant had been discharged from the hospital with oxygen and he has been on oxygen 24 hours a day since discharge. Four days ago he began using only the oxygen whenever he sleeps, and is tolerating well without oxygen during the day sitting at more than 90%. Oxygen saturation is checked through a pulse oximeter he has at home, and claimant is asking if he could be off the oxygen even during the night. Claimant also wants to increase his activity level and is asking if he could start an exercise regimen that would strengthen and condition his body for him to be able to do his previous activities. Claimant also wants his eyes evaluated, as he went to an optometrist last December and was diagnosed to have cataracts in both eyes.

Review of systems shows there is no chest pain, headache or shortness of breath.

Claimant's blood pressure was 110/70, he had clear breath sounds, his heart was of regular rate and rhythm, he had no edema or joint tenderness, and no focal neurological deficits or motor or sensory deficit. Claimant was doing well and advised to return for another check up in 3 months.

November 24, 2009 follow up report states that the claimant is complaining of shortness of breath on exertion and fatigue. Shortness of breath has not been getting worse since last exam of April, 2009, but claimant still feels it every time he does his usual activities, namely golfing or exercising. Claimant does not complain of any difficulty swallowing, of any chest pain, headache, weakness in the arm, or palpitations. All lab tests were within normal limits. Claimant was examined and no medical issues were found. Claimant is being followed by ENT surgeon regarding his cancer and according to him, they have been doing scoping to monitor any progression or recurrence of the cancer and so far everything is looking good. Claimant's shortness of breath could be due to his long history of smoking, or possible COPD, even done the chest x-ray previously done did not indicate any emphysematous changes. COPD however is not ruled out. Claimant was given albuterol inhaler to be used for episodes of shortness of breath.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that had more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. However, claimant's impairment has not lasted 12 months, as his vocal cord cancer was discovered in December, 2008 and he has had no reoccurrence as of November, 2009. Claimant could therefore be denied MA at this step of the analysis.

If claimant had not been denied at Step 2, the analysis would proceed 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 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, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny him again based upon his ability to perform past relevant work. Claimant's past relevant work was as an insurance underwriter. Claimant testified he has not worked since 2004. Hospital records quote the claimant as saying he still performs this work, and he is also quoted in Medical-Social Questionnaire completed by [REDACTED] on December 23, 2008 as saying he is now an independent sales rep for [REDACTED], and has been since 2004. Claimant's medical record does not support a conclusion that he could not engage in his previous profession, whether he is working in it currently or not. Finding that the claimant is unable to perform work which he has engaged in in the past cannot therefore be reached and the claimant is 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 [REDACTED], published by the [REDACTED] [REDACTED]... 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 insufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment, or that he is physically unable to do at least sedentary and light work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. 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 sedentary and light work. Under the Medical-Vocational guidelines, an individual of advanced age (claimant is 64), with more than high school education (claimant has an associate degree) and ability to perform skilled work is not considered disabled pursuant to Medical-Vocational Rule 202.05.

The claimant has not 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 for a period of 12 months. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not 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 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 sedentary and light work even with his alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

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

Date Signed: April 12, 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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