

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: 2009-759

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 16, 2008

Lapeer County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on December 16, 2008. Claimant personally appeared and testified. He was assisted by [REDACTED]

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) eligibility standards?

FINDINGS OF FACT

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

(1) Claimant is a divorced, 36-year-old male with one year of post-secondary education; he stands 6'5" tall and is medically obese at 330 pounds (BMI=41.2).

(2) Claimant lives independently in a trailer he owns; he returned to part-time work as a gravel truck driver in November 2008.

(3) Claimant has been a licensed CDL truck driver for 15 years; however, on April 30, 2008, claimant's authorized representative filed a disability application on his behalf.

(4) If approved, the medical expenses associated with claimant's January/February 2008 hospitalization would have been covered by MA (See also Finding of Fact #7 and #11 below).

(5) When claimant's application was denied his authorized representative (a 3rd party liability specialist) filed a hearing request to protest the denial.

(6) Claimant has never been involved in any mental health treatment or counseling and the medical records submitted do not evidence any severe mental/emotional/cognitive deficits; however, claimant reports he's been depressed due to his recent divorce and health challenges.

(7) On January 15, 2008, claimant was hospitalized secondary to concerns about left kidney cancer, as verified by kidney biopsy; however, claimant's right kidney is functioning normally, per ultrasound (Department Exhibit #1, pgs 125-126 and 128-129).

(8) Claimant's pre-surgical general physical evaluation indicated he was not taking any medications at that time and no contraindications to his upcoming surgery were found (Department Exhibit #1, pg 47).

(9) On January 15, 2008, claimant underwent a successful left kidney nephrectomy which became complicated due to post-operative renal failure and apneic episodes with hypoxemia (Department Exhibit #1, pgs 111 and 116).

(10) While hospitalized, claimant was diagnosed with high blood pressure; consequently, prescription medication was prescribed for cardiac management (Client Exhibit A, pg 3).

(11) Claimant was discharged on February 9, 2008 and no further hospitalizations have been necessary; however, a May 18, 2008 follow-up report indicates he may have recently passed a right kidney stone (Client Exhibit A, pg 4).

(12) As of claimant's December 16, 2008 hearing date, the only prescription or non-prescription medications he was taking were for continued high blood pressure management.

(13) Claimant reported he uses a nasal spray when necessary for intermittent shortness-of-breath symptoms but it does not create problems with truck driving; he also acknowledged his shortness-of-breath symptoms are minimal.

(14) Claimant alleged he is totally unable to do any type of substantial gainful work activity due to chronic low back pain, but then he admitted he is likely to make over [REDACTED] per month when he drives three days a week or more (See Finding of Fact #2 and #12 above).

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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).

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.

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).

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).

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).

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).

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).

Claimant reported at hearing he returned to work in November 2008, and also, he works two or three days per week (at his choosing) depending on how depressed or tired he feels in any particular week (See Finding of Fact #14). Nevertheless, absent any verification of claimant's actual earned income amount, this Administrative Law Judge will give him the benefit of the doubt and find he did not perform substantial gainful work activity during the disputed period as that term is defined by the governing regulations.

Unfortunately for claimant, at Step 2, his medical records fail to support a finding he is physically or mentally incapable of performing any number of full-time jobs currently existing in the national economy, including the truck driving job he was choosing to perform part-time as of his hearing date.

Claimant lives alone and he is fully independent in all activities of daily living. His blood pressure is adequately controlled with the standard drugs and he takes no other prescription or non-prescription medications. Additionally, claimant's treating doctor indicated as early as May 2008 (4 months post-hospitalization) that claimant had made a good recovery and his single right kidney was being maintained with [REDACTED] (for high blood pressure and to improve the hemodynamic within that kidney/prevent further damage)(Client Exhibit A, pg 4). Put simply, claimant's medical records fail to establish his condition met the 12 month durational requirement at Step 2, or rendered him incapable of returning to his past relevant work at Step 4, as required by the sequential evaluation set forth above. Consequently, claimant's April 30, 2008 MA/retro-MA application must remain denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA eligibility standards.

Accordingly, the department's action is *AFFIRMED*.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 30, 2009

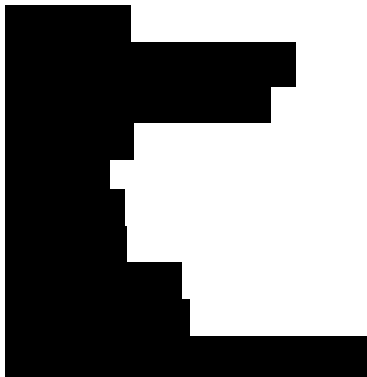
Date Mailed: October 1, 2009

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 receipt 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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