

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: 2009-8187

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 10, 2009

Genesee 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 February 10, 2009. Claimant was represented by [REDACTED]

ISSUE

Did the department properly determine claimant was not disabled by Medicaid (MA) eligibility standards under an application filed on September 11, 2008?

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 applied for disability-based MA/retro-MA on September 11, 2008 at age 64, one month shy of his 65th birthday (DOB: 10/8/43).

(2) Upon reaching age 65 in October 2008, claimant began to qualify for ongoing Medicare medical coverage based solely on his age.

(3) However, in claimant's disability-based Medicaid (MA) application month (9/08) and the applicable retro-MA months (6/08, 7/08 and 8/08), the department decided claimant was not disabled under the governing rules, and thus, that application was denied.

(4) On November 20, 2008, the department received a hearing request to dispute the denial, timely filed by claimant's patient advocate; the hearing was held on February 10, 2009.

(5) At all times relevant, claimant was of advanced age (64).

(6) Claimant completed 7th grade (quit in 8th) and he maintained an heavy, unskilled exertional work history in tree cutting/trimming throughout his adult life; however, as of the disputed application filing date he had not been employed in approximately three years (Client Exhibit A, pg 2).

(7) Claimant is an undisputed alcoholic; in August 2008, he was hospitalized with acute abdominal pains and vomiting initially attributed to alcoholic pancreatitis (Client Exhibit A, pgs 21 and 22).

(8) However, while hospitalized, claimant's abdominal CT scan revealed he also was suffering from serious bilateral hernias, specifically, a bowel-containing inguinal hernia on the right and a fat-containing inguinal hernia on the left (Client Exhibit A, pgs 66-70).

(9) Claimant also had uncontrolled hypertension, active alcoholic hepatitis, anemia and erosive gastritis at this time (Client Exhibit A, pgs 14, 18 and 22).

(10) At the hearing, claimant's patient advocate stipulated retro-MA was being sought only for August and September, 2008 because claimant began receiving Medicare in October 2008 (See also Finding of Fact #2 above).

(11) Since hospitalization in August 2008, claimant has had ongoing, chronic stomach and lower lumbar pain unresponsive to current medications, which is consistent with his advanced age, heavy exertional work history and diagnosed medical conditions.

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

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.

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).

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).

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).

This Administrative Law Judge finds the *de minimus* hurdles set forth in Step 1 and Step 2 above have been met in this case. As such, the analysis must continue.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record reveals claimant has two significant hernias, and thus, he cannot be medically cleared to return to any type of heavy exertional work activity which is the only type of work he has ever done. As such, this analysis must continue.

At Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. At the time claimant's disputed application was filed, he was of advanced age with limited schooling and job experience in only heavy exertional work which he was no longer physically capable of performing. Therefore, considering claimant's vocational factors in light of the Medical-Vocational Grid Rules that must be applied at this step, this Administrative Law Judge finds claimant is disabled and was disabled at all times relevant to his September 11, 2008 MA/retro-MA application based on Med-Voc Rules 201.01 (sedentary exertional level jobs), 202.01 (light exertional level jobs) and 203.01 (medium exertional level jobs). All these rules direct a disability allowance. As such, the department's denial of claimant's disputed MA/retro-MA application was simply erroneous and it cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erroneously denied claimant's September 11, 2008 MA/retro-MA application.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application processing consistent with departmental rules. If claimant meets all of the

other financial and non-financial eligibility requirements necessary to qualify for MA/retro-MA, his application must be approved. **SO ORDERED.**

/s/

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

Date Signed: February 1, 2010

Date Mailed: February 2, 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 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.

MBM/db

cc:

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