

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: 2010-10452
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2010
Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 January 27, 2010.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for Medical Assistance (MA).

FINDINGS OF FACT

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

- (1) June 30, 2009, claimant applied for MA and State Disability Assistance (SDA).
- (2) September 23, 2009, the Medical Review Team (MRT) approved claimant's SDA application and denied claimant's MA application. Department Exhibit A.

(3) October 17, 2009, the department sent claimant written notice that the medical application was denied.

(4) October 23, 2009, the department received claimant's timely request for hearing.

(5) December 17, 2009, the State Hearing Review Team (SHRT) denied claimant's application for MA. Department Exhibit B.

(6) January 27, 2010, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by heart disease, torn rotator cuff, and depression.

(8) Claimant is 50 years old, 5'5" tall, and weighs 152 pounds. Claimant completed high school and Hospice training. Claimant is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home with some assistance.

(9) Claimant's past relevant employment has been in home health care and as a receptionist.

(10) July 23, 2008, claimant underwent transesophageal echocardiogram and a report was prepared that indicates the following: mild left ventricular systolic dysfunction with estimated ejection fraction of 40-45 percent with a large area of inferior akinesis; the aortic valve is trileaflete but heavily calcified and appears mildly stenotic with moderate to severe aortic regurgitation present; mild to moderate mitrial regurgitation likely due to an ischemic etiology with capillary muscle dysfunction; mild tricuspid regurgitation; and small patent foramen ovale is present. Department Exhibit A, pgs 58-60. August 6, 2008, claimant underwent right heart catheterization, left heart catherization, selective left and right coronary artery study, left ventriculography, and aortogram. The prepared report indicates the following conclusions:

normal right heart and left heart hemodynamics; normal oxygen saturation; normal cardiac output in cardiac index; single vessel coronary artery disease with total occlusion of the right coronary artery at its origin; the distal vessel does fill from the left circulation by contour collateral flow; abnormal left ventriculogram demonstrating inferobasal akinesis; ejection fraction is estimated at 50 percent; +1/4 mitral insufficiency; +2/4 aortic insufficiency.

Department Exhibit A, pgs 61-69.

(11) August 18, 2008, claimant underwent objective medical testing following heart catheterization. Exam showed small pseudoaneurysm arising from the profunda femoral artery. Thrombin injection was to be performed to allow complete thrombosis without complication.

Department Exhibit A, pgs 74-75.

(12) On or about June 24, 2009, claimant underwent coronary artery bypass grafting x 3, with internal mammary artery, as well as stentless porcine aortic valve replacement. The initial postoperative course was unremarkable and claimant was discharged to home on July 2, 2009.

(13) July 9, 2009, claimant underwent objective medical testing and was found to have a moderate size right pleural effusion that had 1.4 liters drain on July 10, 2009. . July 12, 2009, following aspiration of pleural fluid chest x-rays were performed that revealed persistent mild bibasilar atelectasis with mild interval improvement in aeration at the right lung base when compared to prior exam; residual small right pleural effusion. Department Exhibit A, pgs 249 and 250. X rays performed on July 15, 2009, revealed no change from previous exams.

Department Exhibit A, pgs 53-254.

(14) July 15, 2009, claimant underwent a physical exam and a letter was prepared that indicates claimant's lungs are clear with some base crackles remaining which is consistent with

chest x-ray which demonstrates continued bibasilar linear atelectasis as well as tiny right pleural effusion as well as a minute left pleural effusion. Heart is regular in rate and rhythm. Sternal and saphenectomy sites are healing well and sternum is stable with cough. ECG demonstrates sinus rhythm verses sinus tachycardia at 92 beats per minute. Department Exhibit A, pgs 125-263.

August 12, 2009, chest x-rays revealed slight improvement in the appearance of the heart and lungs in the short interval; overall there are still persistent abnormalities compared to remote chest x-ray. The report indicates that there is less interstitial and pleural fluid. The heart is large but is not larger. There is bilateral pleural fluid and effacement of the left hemi-diaphragm by atelectasis or fluid behind the heart. There is fluid in the fissure on the right. The perihilar markings continue to appear shaggy. There is slightly better aeration of the left lung base. Department Exhibit A, pgs 264-265.

(15) December 31, 2008, claimant underwent surgical repair of a chronic rotator cuff tear, right shoulder. Objective physical examination had revealed biceps instability and impingement syndrome. Department Exhibit A, pgs 84-87.

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.

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).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

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 so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates a history of heart disease and heart surgery. At last surgery during June 2009, claimant suffered persistent pleural effusion. Despite aspiration of 1.4 liters of fluid, claimant continued to retain fluid in the lungs and/or around the heart. At hearing, claimant testified to severe shortness of breath on exertion and fatigue consistent with the objective medical evidence of record. The objective medical evidence of record also indicates that claimant underwent surgery to repair a right rotator cuff tear. The record contains no objective medical evidence to establish severe impairments due to this condition. Finding of Fact 10-15. At hearing, claimant testified to depression and indicated she was taking antidepressants. Claimant provided no mental health treatment records to corroborate severe impairments due to depression. Department Exhibit A.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a home health care provider and in clerical work. See discussion at Step 2 above. Finding of Fact 9-15. The objective medical evidence of record appears to establish that claimant would have great difficulty performing the heavy duties required in her past relevant employment in home health care. Claimant's severe fatigue and breathlessness would appear to impair her from performing the duties required by past relevant employment in home health care and secretarial work.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has functional impairments that prevent claimant for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is not disqualified from receiving disability at Step 4.

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).

At Step 5, see discussion at Steps 2 and 4 above. Finding of Fact 10-15.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform less than sedentary activities. Considering claimant's Vocational Profile (closely approaching advanced age, high school education, and history of unskilled work) and relying on Vocational Rule 201.12, claimant is disabled. Therefore, claimant is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant meets the disability requirements to qualify for Medical Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for Medical Assistance.

Accordingly, the department action is, hereby, REVERSED. The department is to initiate an evaluation of claimant's financial eligibility for Medical Assistance consistent with department policy and this decision and order. Medical review is set for March 2011. Claimant shall provide updated medical records at review. Claimant is to seek and fully comply with mental health treatment for depression. Claimant shall provide treatment records at review. Failure to do so may affect future eligibility.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 7, 2010

Date Mailed: April 20, 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.

SMB/db

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