

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: 2010-17370  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 7, 2010  
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Jana B. 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, an in-person hearing was held on April 7, 2010. Claimant was represented by [REDACTED]

ISSUE

Whether claimant had 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 16, 2009, claimant applied for MA and retroactive MA.
- (2) December 21, 2009, the Medical Review Team (MRT) denied claimant's application. (Department Exhibit A.)
- (3) December 29, 2009, the department sent claimant written notice that the application was denied.

(4) January 8, 2010, the department received claimant's request for a hearing.

(5) February 10, 2010, the State Hearing Review Team (SHRT) denied claimant's application. (Department Exhibit B.)

(6) April 7, 2010, the in-person hearing was held.

(7) Claimant asserts disability based on impairments caused by COPD, stroke symptoms, and depression.

(8) Claimant testified at hearing. Claimant is 54 years old, 5'5" tall, and weighs 150 pounds. She completed high school and is able to read, write, and perform basic math. Claimant has a driver's license but does not have a drivable car. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been in retail sales.

(10) May 16, 2009, claimant was admitted to hospital due to change in mental status. Admitting diagnoses were: severe electrolytes disturbance; decrease level of consciousness secondary to severe electrolytes disturbance; history of alcoholism; chronic obstructive pulmonary disease (COPD); nicotine addiction; and depression. Claimant underwent detox for alcohol withdrawal and eventually stabilized her electrolytes. She had some setbacks with respiratory distress related to her history of COPD and history as a heavy smoker. Patient diet was augmented protein supplements. Claimant was discharged with hyponatremia completely resolved. Discharge diagnoses were: hypomatremia; encephalopathy secondary to hyponatremia; decreased level of consciousness secondary to encephalopathy; history of alcoholism; malnutrition secondary to alcoholism; chronic obstructive pulmonary disease (COPD); nicotine addiction; depression; and dysphonia. (Department Exhibit A, pages 95-146.) CT scan of the head conducted on May 29, 2009 revealed fourth ventricle midline without mass;

the posterior fossa is mildly degraded by streak artifact; the supratentorial brain revealed mild atrophy; ventricles are at the upper limits are normal; no mass, midline shift, extra axial fluid collection; acute major territorial infarct or brain hemorrhage. Following administration of IV contrast, there is no enhancing brain mass or vascular malformation. There is no abnormal brain enhancement. (Department Exhibit A, pages 84-85.) MRI of the brain conducted on June 1, 2009 revealed chronic small vessel ischemia change on the pons, bilateral thalami, and deep white matter; no bleed, mass effect or midline shift; no acute infarct; bilateral mastoid opacification adjusting mastoiditis. (Department Exhibit A, pages 87-88.) MRI of the cervical spine conducted June 1, 2009 revealed mild cervical spondylotic changes and bilateral neuroforaminal narrowing; no spinal stenosis at any level; no acute fracture or spondylolisthesis. (Department Exhibit A, pages 89-90.) X-rays of the cervical spine conducted on May 16, 2009 revealed extensive bilateral carotid calcification; alignment is maintained. (Department A, page 78.) May 17, 2009 chest x-ray revealed mild pulmonary hyperinflation bilaterally; no congestive heart failure; no active pulmonary disease. (Department Exhibit A, page 78.) May 16, 2009 x-rays of the lumbar spine revealed mild fracture of the superior endplate of L2, age of fracture uncertain; bilateral facet arthropathy at L5-S1, worse on the right. (Department A, page 77.)

(11) November 25, 2009, claimant underwent an independent medical examination and a narrative report was prepared. The report indicates in pertinent part that patient is cooperative in answering questions and following commands. Immediate, recent and remote memory appeared intact with normal concentration. Patient insight and judgment are both appropriate. Neck is supple without masses. There are bilateral carotid bruits. Chest has prolongation of the expiratory phase. Breath sounds are clear to auscultation and symmetrical.

There is no accessory muscle use. Heart has III/VI aortic systolic murmur without enlargement. There is a normal S1 and S2. Abdomen has no organomegaly or masses. Bowel sounds are normal. No clubbing, cyanosis, or edema was detected. The femoral and popliteal pulses are decreased. The dorsal pedis and posterior pulses are absent bilaterally. Hair growth is absent on the lower extremity. Feet are warm and normal color. There are no femoral bruits. There is no evidence of joint laxity, crepitation, or effusion. Grip strength remains intact. Dexterity is unimpaired. Patient could pick up a coin, button clothing, and open the door. Heberden's nodes are present as well as synovial hypertrophy at the CMC joint. Patient had no difficulty getting on and off the exam table, moderate difficulty heel and toe walking, moderate difficulty squatting, and was unable to hop. Range of motion was normal in all joints tested. Cranial nerves are intact. Motor strength and tone are normal. Sensory is intact to light touch and pinprick. Reflexes are intact and symmetrical. Romberg is negative. Patient walks with a small step gait without use of an assistive device. Doctor's conclusions are that claimant has hypertension with stable blood pressure. She had aortic systolic murmur and findings of osteoarthritic disease in her hands. Doctor opined that patient should avoid repetitious activities, operation of heavy machinery, and lifting of over 50 pounds. (Department Exhibit A, pages 5-9.)

#### 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 that during May 2009, claimant was admitted to the hospital due to altered state of consciousness. She went through alcohol detox and was found to have severe electrolyte imbalance, nonspecific encephalopathy, COPD, and malnutrition due to secondary to alcoholism. Claimant was treated through the first of June at the hospital and discharged with the electrolyte imbalance completely resolved. Objective medical testing revealed claimant has mild atrophy in the supratentorial, mild hyperinflation of the lung, bilateral carotid bruit, and aortic systolic heart murmur. She has chronic small vessel ischemic changes to the pons, bilateral thalamic and deep white matter. Testing of all other body systems revealed claimant's functioning to be within normal limits. (Finding of Fact #10-#11); Department Exhibit A; DSM IV, 1994 R.

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 retail sales. See discussion at Step 2 above. (Finding of Fact #9-#11.)

At Step 4, the objective medical evidence of record is not 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 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 discussions at Step 2 above. (Finding of Fact #10-#11.)

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least medium work activities. Considering claimant's vocational profile (advanced age, high school graduate, and history of unskilled work) and relying on Vocational Rule 203.17, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has not established disability for Medical Assistance.

Accordingly, the department's action is hereby UPHELD.

/s/ \_\_\_\_\_  
Jana B. Bachman  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: July 19, 2010

Date Mailed: July 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.

JBB/tg

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