

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: 2010-17520

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 23, 2010

Houghton County DHS

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

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 March 23, 2010. Client was represented by [REDACTED]

ISSUE

Did the department properly determine that Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P)?

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 September 21, 2009, Claimant applied for MA-P and retro MA-P benefits.
- (2) On October 21, the Medical Review Team denied Claimant's request for MA-P and benefits.

(3) On October 27, the department notified Claimant that he was denied MA-P benefits.

(4) On January 25, 2010, the department received Claimant's hearing request, protesting the denial of MA-P benefits.

(5) The State Hearing Review Team (SHRT) upheld the denial of MA-P benefits.

(6) Claimant applied for disability benefits based on having pulmonary infiltrates, mitral valve prolapse, depression/anxiety, and shortness of breath. (Department Exhibit 1, p. 3)

(7) Chest x-ray, done on February 23, 2009, revealed a large mass in Claimant's left upper lung; Claimant was diagnosed with left upper pneumonia-in stable condition; and the doctor recommended highly that Claimant stop smoking. (Department Exhibit 1, pp. 52 & 53)

(8) Claimant was seen in a clinic and underwent a complete physical examination which revealed: lungs clear to auscultation bilaterally; musculoskeletal exam was grossly intact with muscle strength at 5/5; neurological exam was normal; cardiovascular exam revealed a 2/6 murmur heard on the left sternal border, likely consistent with history of mitral valve prolapse; and the rest of the examination did not reveal any significant abnormal findings. (Department Exhibit 1, p. 61)

(9) Claimant was hospitalized from July 23, 2009 to July 28, 2009 due to progressive left upper lobe consolidation and hemotysis; and Claimant has a history of mitral valve prolapse, hypertension (not currently on medications), and tobacco abuse for the last 22 years.

(Department Exhibit 1, pp. 12-38)

(10) While hospitalized in July 2009, Claimant underwent bronchoscopy which revealed an acute inflammatory process without malignant cells; the CT needle biopsy was

nondiagnostic; however, the surgical biopsy revealed granulomatous caseating necrosis and blastomycosis, negative for neoplasia. (Department Exhibit 1, p. 12)

(11) Claimant's discharge disposition was the following: regular diet; ambulate at least three times a day; shower two times a day with antibacterial soap to the wounds; and no driving or lifting over 10 pounds for four weeks (Department Exhibit 1, p. 12)

(12) Follow-up exams done on August 5, 2009, and August 20, 2009 did not reveal any significant abnormal findings. (Department Exhibit 1, pp. 64 & 65)

(13) Claimant is a 38 year-old male with a high school education and unskilled work experience.

(14) Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

(15) The Supplemental Security Income (SSI) application that Claimant filed with the Social Security Administration (SSA) was denied; however, Claimant reported that he has an SSI appeal pending.

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).

"Disability" is:

...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.

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).

Since Claimant was not engaged in substantial gainful activity at any time relevant to this matter, the analysis continues.

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are

demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Claimant applied for disability benefits based on having pulmonary infiltrates, mitral valve prolapse, depression/anxiety, and shortness of breath. Claimant and his witness testified that Claimant is depressed, withdrawn, and he doesn't like people. However, there is no objective medical evidence that Claimant is mentally incapable of engaging in substantial gainful activity due to having a severe mental impairment.

The finding of a severe impairment at Step 2 is a *de minimus* standard, and Claimant does have a combination of physical problems that would affect his ability to do basic work activity. Therefore, the analysis will continue to Step 3 based on Claimant's physical limitations.

Claimant failed to establish that he has a severe impairment which meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1. Therefore, the analysis continues.

Based on the objective medical evidence on the record, Claimant's physical limitations would compromise his ability to do his past relevant work. Claimant testified that his past relevant work included doing farm work; and working as an equipment operator, meter reader, repairman, and a heavy laborer. This Administrative Law Judge finds that Claimant has a combination of physical problems that would affect his ability to do heavy work, significantly. Therefore, the analysis will continue to determine Claimant's residual functional capacity or what he is able to do despite limitations. 20 CFR 416.945 and 20 CFR 416.961.

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).

This Administrative Law Judge finds that Claimant should be able to do at least sedentary or light work. Claimant did submit a Medical Examination Report from a qualified medical source which indicates that he is unable to do any lifting or standing and/or walking for 2 hours or more; and he has problems with his memory and sustained concentration. This Administrative Law Judge did not give the doctor's opinion of Claimant's physical and mental limitations much weight because there was no objective medical evidence or laboratory data to

support the doctor's residual functional capacity assessment. The doctor indicated that Claimant was examined on January 14, 2010, and March 25, 2010. According to the medical doctor whose specialty is family practice, the complete examination was normal, except Claimant's respiratory exam revealed diffuse wheezes. (See Claimant Exhibit A1 & A2) Claimant was hospitalized from July 23, 2009 to July 28, 2009 due to progressive left upper lobe consolidation and hemotysis. Claimant underwent bronchoscopy which revealed an acute inflammatory process with without malignant cells; the CT needle biopsy was nondiagnostic; however, the surgical biopsy revealed granulomatous caseating necrosis and blastomycosis, negative for neoplasia. Claimant's discharge disposition was the following: regular diet, ambulate at least three times a day, shower two times a day with antibacterial soap to the wounds; and no driving or lifting over 10 pounds **for four weeks**. Follow-up exams done on August 5, 2009, and August 20, 2009 did not reveal any significant abnormal findings. (Department Exhibit 1, pp. 64 & 65).

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is a young individual with a high school education and unskilled work experience. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rule 201.27 and 202.20 as guidelines, clamant would be considered not disabled. According to these Medical Vocational Rules a young individual under the age of 45, with a high school education and unskilled work experience, limited to sedentary work and light work, respectively, **is not** disabled.

In conclusion, Claimant does not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the department's MA-P decision is upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined that Claimant did not meet the MA P disability standard.

Accordingly, the department's MA P decision is affirmed.

/s/ _____
Marya A. Nelson-Davis
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 1, 2010

Date Mailed: October 4, 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.

MAND/db

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