

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: 2010-31731

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 26, 2010

Ingham 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 May 26, 2010. 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) On June 5, 2009, a third party liability specialist ([REDACTED]) filed a disability-based MA/retro-MA application on claimant's behalf in their capacity as his authorized representative.

(2) If that application had been approved, the medical expenses associated with claimant's brief hospitalization (3/13/09-3/14/09) would have been covered by MA/retro-MA.

(3) When the department denied that application the third party liability specialist filed a timely hearing request on claimant's behalf.

(4) Claimant's hearing was held on May 26, 2010.

(5) Claimant stated at hearing his only allegedly disabling impairment is diagnosed Chronic Obstructive Pulmonary Disease (COPD).

(6) Claimant will be [REDACTED] s on [REDACTED] additionally, he has no formal education beyond the high school level.

(7) Claimant stands 6'0" tall and weighs 220 pounds; he is left hand dominant, per self report.

(8) Claimant is divorced and he currently resides with his mother; he is fully independent in all self cares and activities of daily living except driving because he lost his license in 2006 secondary to his third OUIL offense.

(9) Claimant's past relevant work history (25+ years) is as a journeyman bricklayer (heavy exertional activity), but he stopped doing that in May 2007.

(10) Claimant stated at hearing he applied for a job at [REDACTED] in 2008 but he was not hired there so he gave up looking for other work.

(11) Claimant's overnight hospitalization at [REDACTED] in March 2009 was required because he was experiencing an acute exacerbation of shortness-of-breath symptoms (Department Exhibit #1, pgs 39-42).

(12) Claimant's discharge summary verifies ongoing alcohol dependence at the rate of one fifth of liquor daily with his last use being two days prior to admission (Department Exhibit #1, pg 40).

(13) Additionally, claimant has a long history of nicotine abuse beginning at age 17 but he stated at hearing he has reduced his intake from one pack per day to one and a half packs per week since March 2009.

(14) Claimant was discharged from [REDACTED] in good and stable condition; prior to discharge, alcohol and smoking cessation were medically recommended.

(15) Claimant has not had any further hospitalizations or emergency room visits since March 2009 (Department Exhibit #1, pg 7)(See also Finding of Fact #11 above).

(16) In December 2009, six months after the filing of claimant's disputed MA/retro-MA application, he underwent an independent physical examination at [REDACTED] to assess his overall health and residual functional capacity (Department Exhibit #1, pgs 7-9).

(17) Claimant was described as a well-developed, well-nourished male in no acute distress with normal gait/ambulation and no cognitive/emotional/mental deficits.

(18) Additionally, a pre-bronchodilator pulmonary function test done that day (PFT) was within normal limits (Department Exhibit #1, pgs 9 and 10).

(19) Claimant stated at hearing he uses bronchodilators [REDACTED] to control his shortness-of-breath symptoms (Client Exhibit A).

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...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).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(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).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

Additionally, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered.

Claimant does not qualify for the MA/retro-MA benefits he seeks because neither he nor his authorized representative has presented any medical evidence to support a finding that claimant has any severe physical or mental impairments which would prevent employability, as long as he uses his bronchodilators as prescribed. In fact, claimant's December 2009 PFT results were within normal limits even absent the administration of bronchodilator treatments that day (See Finding of Fact #18 above). In short, absolutely nothing in claimant's medical records establishes he is incapable of working in a wide variety of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases.

Furthermore, even if this analysis proceeded to the final step in the sequential evaluation process set forth above, claimant would be unsuccessful in establishing a legally disabling condition.

Claimant is a high school graduate of advanced age and an unskilled work history. Consequently, claimant's vocational factors, when considered in light of the medical records presented, are consistent with Medical-Vocational Rule 203.14, which directs a finding of not disabled based on the residual functional capacity to perform at least medium exertional level work, as that term is defined above. Therefore, claimant's disputed MA/retro-MA application must remain denied based on lack of severity shown, or alternatively, based on Medical-Vocational Rule 203.14.

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: June 15, 2010

Date Mailed: June 15, 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

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