

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: 2010-3609

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 17, 2009

Marquette 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 December 17, 2009. Claimant was represented by [REDACTED].

ISSUE

Whether claimant has 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) May 28, 2009, claimant applied for MA and retroactive MA.
- (2) June 12, 2009, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

(3) September 21, 2009, the department sent claimant written notice the application was denied.

(4) September 21, 2009, the department received claimant's timely request for hearing.

(5) October 30, 2009, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) December 17, 2009, the telephone hearing was held.

(7) Claimant asserts disability based on impairments caused by heart disease, gall bladder trouble, pain in right arm, shoulder, and wrist, back pain, depression, and anxiety.

(8) Claimant testified at hearing. Claimant is 53 years old, 5'6" tall, and weighs 155 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. She cares for her needs at home.

(9) Claimant's past relevant employment has been doing commercial cleaning and maintenance.

(10) February 22, 2009, claimant presented to hospital due to severe substernal chest discomfort. Claimant was admitted and underwent left heart catheterization, left ventriculogram, bilateral selective coronary angiography, CT scan of the abdomen and thorax, and 2DM mode echocardiogram with color flow doppler. Medical testing revealed claimant to have acute coronary syndrome, hypothyroidism, left upper lobe lung opacification, and bicuspid aortic valve with mild aortic insufficiency. Treatment plan was medication in the form of aspirin and statins and doctor stressed smoking cessation. Claimant was to engage in regular exercise program and watch her diet. Department Exhibit A, pgs 11-17.

(11) April 13, 2009, claimant's family physician completed a Medical Examination Report (DHS-49) following physical exam that took place on March 25, 2009. Doctor indicates diagnoses of heart disease, back pain due to degenerative changes and Grade 1 retrolisthesis at L5/S1, hyperlipidemia. Doctor indicates a normal physical exam with the exception of lower back pain with radicular symptoms. Doctor did not evaluate claimant's functional capabilities. Department Exhibit A, pgs 18-19.

(12) June 2, 2009, claimant presented to a physician indicating that she was bothered by anxiety in relationship to current personal problems. Doctor indicated that medications would be prescribed. July 14, 2009, claimant presented to physician complaining of painful feet. Claimant was found to have a plantar wart which was causing significant pain. Physician referred claimant to a podiatrist. August 19, 2009, claimant presented to doctor complaining of gall bladder attack that required treatment at the hospital emergency department. Department Exhibit A, Treatment Notes, 3 pgs. August 14, 2009, claimant underwent a chest x-ray that revealed a negative chest x-ray. Department Exhibit A, X-Ray Report, 8-14-09.

(13) September 18, 2009, claimant underwent an independent physical examination and a narrative report was prepared that indicates claimant showed no evidence of joint laxity, crepitus, or effusion. Full fist with full grip and adequate pincher grasp was noted on the left. Decreased grip, fist, and pincher grasp was noted on the right, graded at 4+/5. Dexterity appeared unimpaired. Claimant was able to tie a shoelace, button clothing, and pick up a dime. Patient had not difficulty getting on and off exam table, no difficulty heel walking, mild difficulty walking on the toes of her right foot, moderate difficulty walking on her left toes which were painful due to plantar wart over the sole of the first MTP joint, mild difficulty squatting and arising, no difficulty balancing, no difficulty hopping on the right, mild difficulty hopping on the left, and

no difficulty with tandem walk. Claimant complained of pain in her back with lumbar spine lateral flexion motions and would not attempt lumbar spine extension motion because she “would faint.” Claimant complained of pain in right groin with right hip motions, and pain that was intermittent with right knee extension motion. Range of motion in cervical spine was as follows: extension reduced 10 degrees, right lateral flexion reduced 5 degrees, left lateral flexion reduced five degrees, right and left rotation reduced 15 degrees. Right shoulder abduction was reduced 20 degrees, internal rotation reduced 5 degrees, external rotation reduced 5 degrees. Left shoulder external rotation was reduced 5 degrees. Right and left elbow range of motion was within normal limits. Range of motion in left and right hip was within normal limits. All other joints tested were within normal limits. Doctor indicates that Tinel’s sign was negative on the left but positive on the right as patient complained of a tingling sensation in the fourth and fifth fingers with tapping over the carpal tunnel. Phalen’s maneuver bilaterally was negative. Doctor concludes that claimant has neck and back pain that appear to be primarily due to musculoskeletal pain, although an element of degenerative disc disease could be present. No evidence of nerve root irritation was appreciated. Loss of motor strength of significance was not appreciated. The true degree of loss of sensation in the right hand was not clear, as the patient claimed anesthesia to light touch on the palms and fingers, yet demonstrated adequate grip and pincher strength without evidence of digital dexterity loss. Claimant did not require use of an assistive device to ambulate. Doctor also indicates that claimant is a long time smoker who infrequently uses an inhaler for shortness of breath suggesting a mild degree of asthma.

Department Exhibit A, Report, 9-18-09.

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 of record indicates that claimant has mild heart disease which is treated with aspirin and statin drugs. The objective medical evidence of record does not indicate that claimant is to limit her physical activities due to this condition. The objective medical evidence of record indicates that claimant has back and hip pain that is likely due to musculoskeletal pain but possibly due to some degenerative disc disease. Claimant has some reduced range of motion in her lumbar spine and her right shoulder. The objective medical evidence of record indicates that claimant has a plantar wart on her left foot which causes pain. Claimant was capably able to perform orthopedic maneuvers. The objective medical evidence establishes that claimant may have carpal tunnel syndrome in her right hand. She has some anesthesia to light touch on the palms and fingers but has adequate grip and pincher strength without evidence of loss of digital dexterity. Finding of Fact 10-13.

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 doing commercial building cleaning and maintenance. See discussion at Step 2 above. Finding of Fact 9-13.

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 in a full time position as 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 discussion at Steps 2 and 4 above. Finding of Fact 10-13.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant retains the residual functional capacity to perform at least light work activities. Considering claimant's Vocational Profile (closely approaching advanced age, high school education, and history of unskilled work) and relying on Vocational Rule 202.13, claimant is not disabled. Therefore, claimant is disqualified from receiving disability at Step 5.

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 Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 4, 2010

Date Mailed: February 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.

JAB/db

cc:

