

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

[REDACTED]

Reg No. 201043613
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 21, 2010
Midland 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on September 21, 2010. Claimant personally appeared and testified. He was assisted by [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-MA eligibility standards?

FINDINGS OF FACT

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

1. Claimant is a divorced, 59-year-old high school graduate who relocated to [REDACTED] from [REDACTED] in July 2002; he currently lives with friends in [REDACTED].
2. Claimant has a long history of skilled/semi-skilled, professional work in radio and television broadcasting (e.g., producing/directing/on-air personality/creating commercials, etc.); he went directly into this field without obtaining a degree, but he has taken two years of focused college classes in this area.

3. Since claimant moved to [REDACTED] in 2002 he has been unable to find work in his chosen field, and thus, he has worked sporadically in unskilled jobs (e.g., restaurant cook/landscaping, etc.).
4. On February 26, 2010, claimant applied for disability-based medical coverage (MA/retro-MA0).
5. If this application had been approved the medical expenses associated with claimant's brief November 2009 hospitalization would have been covered by MA/retro-MA.
6. When the department denied claimant's application his authorized representative filed a hearing request to dispute the denial.
7. On September 21, 2010, claimant's hearing was held in the local department office; he was assisted by his authorized representative.
8. Claimant is fully independent in all self cares and daily living activities except driving because he does not have the money necessary to pay his mandatory license reinstatement fee.
9. Cardiac testing done during claimant's November 2009 hospitalization secondary to reported chest pain revealed absolutely no existing, severe cardiac impairments (Department Exhibit #1, pgs 13-23).
10. Claimant testified at hearing he had two cardiac stents placed in remote procedures done in 2007 and 2009 without complications; in fact, he said his heart is now "pumpin' fine."
11. Claimant has been diagnosed with high blood pressure and high cholesterol both capable of adequate control with standard prescription medications.
12. Claimant's November 2009 hospital records verify he is an insulin-dependent diabetic ([REDACTED]) who also takes oral medication for cover ([REDACTED]).
13. Claimant testified at hearing he maintains due diligence in testing his blood sugar levels with adequate control achieved in the 100-150 daily range.
14. On December 2, 2008, claimant underwent an independent psychological evaluation in conjunction with his attempt to establish disability status under the governing rules.

15. Despite being identified as an individual with a longstanding gender identify disorder (since childhood) claimant was noted to be fully oriented with no memory difficulties, no delusions, persecutions, obsessions, etc., and easy rapport; his Global Assessment Function (GAF) was 55 (Department Exhibit #1, pgs 31-37).
16. Likewise, an independent physical examination conducted on April 6, 2009 revealed no physical impairments other than those listed in Finding of Fact #10-#12 above (Department Exhibit #1, pgs 38-41).
17. Claimant testified at hearing he is fully capable of working, and in fact, he applied for a restaurant cook job about three months earlier, but he believes he was not hired because the potential employers felt threatened by his gender issues.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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).

...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).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the

sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

...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).

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.

...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.

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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

...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).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

[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).

Claimant does not qualify for the MA/retro-MA coverage he seeks because neither he nor his authorized representative have provided any objective test results to support a conclusion that he has a mental or physical condition, or combination of conditions, severe enough to meet the disability standard cited above. Put simply, claimant's medical records fail to rise to the level necessary to qualify for disability-based MA/retro-MA. Claimant is fully independent in all activities of daily living and the record reveals his treating doctor is prescribing standard medications in response to his diagnosed conditions. These medications can reasonably be expected to adequately address claimant's maintenance issues. Consequently, this Administrative Law Judge concludes claimant is fully capable of working in a wide variety of simple, unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, claimant's MA/retro-MA application must remain denied for lack of severity shown.

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/retro-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: October 12, 2010

Date Mailed: October 12, 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.

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