

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201139084
Issue No: 2009
Case No: [REDACTED]
Hearing Date: October 18, 2011
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 October 18, 2011. The claimant personally appeared and provided testimony. The claimant was represented by his authorized representative, [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA) and retroactive Medical Assistance benefits?

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 October 25, 2010, claimant filed an application for Medical Assistance and retroactive Medical Assistance benefits alleging disability.
- (2) On March 9, 2011, the Medical Review Team denied claimant's application stating that the claimant retained the capacity to perform other work.
- (3) On March 19, 2011, the department caseworker sent claimant notice that his application was denied.
- (4) On June 14, 2011, the claimant's authorized representative filed a request for a hearing to contest the department's negative action.
- (5) On July 19, 2011, the State Hearing Review Team again denied claimant's application stating that the claimant's condition did not meet the

durational requirement of 12 months and that his condition had improved or was expected to improve during that 12 month time period.

- (6) The record was left open following the hearing as the claimant produced new medical evidence at the time of hearing. After the new medical evidence was submitted, the State Hearing Review Team again denied the claimant's application on December 1, 2011 stating that the claimant's condition improved within 12 months of the date of onset or the date of surgery. The State Hearing Review Team further stated that the claimant retained the capacity to perform a wide range of light work.
- (7) On October 7, 2010, the claimant was admitted to [REDACTED] for complaints of chest pain and shortness of breath. The claimant was given a discharge diagnosis of chronic systolic congestive heart failure, nonischemic cardiomyopathy with an ejection fraction of 15%, chronic obstructive pulmonary disease, resolving hypokalemia, depression, and ongoing ETOH abuse. The claimant underwent a CT scan of the thorax which revealed large bilateral pleural effusions. He also underwent a pulmonary function test that resulted in a FVC of 3.59 liters (78% of predicted) and a FEV1 of 1.81 liters (50% of predicted). An ultrasound-directed thoracentesis was conducted and 730 ml of fluid was removed from the claimant. (Department Exhibit A pages 51-64).
- (8) The claimant was seen at Michigan Heart on November 1, 2010 for a follow-up examination subsequent to his hospitalization at [REDACTED]. The impressions noted were dilated nonischemic cardiomyopathy with ejection fraction 10-20%, acute systolic heart failure, severe mitral regurgitation, dyslipidemia, and history of moderate alcohol intake. (Department Exhibit A pages 28-31).
- (9) The claimant underwent an EKG on April 11, 2011 which showed that he still continued to have a severe LV dysfunction with an ejection fraction of 20%. (Claimant Exhibit A pages 1-5 and Department Exhibit C pages 1-3).
- (10) The claimant had a cardioverter defibrillator implanted in June of 2011 due to his continued severe left ventricular systolic dysfunction with an estimated ejection fraction of approximately 20%. (Claimant Exhibit A pages 13-14 and 18-19).
- (11) The claimant's primary care physician, [REDACTED], has diagnosed the claimant with cervical spondylosis, idiopathic cardiomyopathy, benign paroxysmal vertigo, lumbago, and osteoarthritis NOS. (Claimant Exhibit A pages 22-39 and Department Exhibit A pages 38-48).

- (12) The claimant was seen again at [REDACTED] on September 9, 2011 due to chest pain, shortness of breath, and heart palpitations. He was given a discharge diagnosis that included chest pain secondary to PVC's, nonischemic cardiomyopathy, congestive heart failure, and chronic obstructive pulmonary disease. (Claimant Exhibit A pages 1-7).
- (13) Claimant is a 50 year old man, date of birth [REDACTED]. He stands 5'10" tall and weighs 170 lbs. He completed high school and received a diploma. He does not have any additional formal education or training. He did receive certificates in small engine repair and automotive painting through his previous employment. The claimant has a work history consisting of light to medium work which ranged from unskilled to skilled. The claimant is currently not working and has not done so since 2005.
- (14) The claimant has filed for Social Security Disability benefits. He was denied at application but has appealed that determination.

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 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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in

question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" and that said impairment(s) have met the duration requirement (20 CFR 404.1520(c) and 416.920(a)(2)(ii) and (c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). In order for an impairment(s) to meet the duration requirement, the impairment(s) must have lasted or be expected to last for at least 12 months, unless the impairment(s) is expected to result in death (20 CFR 416.909). If the claimant does not have a severe medically determinable impairment or combination of impairments that have met the duration requirement, he/she is not disabled. If the claimant has a severe impairment or combination of impairments that have met the duration requirement, the analysis proceeds to the third step.

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). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

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 activity can be achieved, a finding of not disabled must be rendered.

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).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, the claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms and has met the durational

requirement. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

This Administrative Law Judge finds that the objective medical evidence of record does support the claimant's contention that he is suffering from a severe physical impairment that has lasted or is expected to last for 12 months. The claimant has been diagnosed with nonischemic cardiomyopathy and congestive heart failure. The objective medical evidence of record shows that the claimant continued to have an extremely low ejection fraction (20 % or less) from October 2010 through his ICD implant in June of 2011. The claimant was admitted to the hospital in September of 2011 due to chest pains and shortness of breath. His discharge diagnosis continued to show nonischemic cardiomyopathy and congestive heart failure. The objective medical evidence of record therefore shows that the claimant's severe impairments have lasted or could be expected to last for 12 months and therefore meet the duration requirement.

The analysis then proceeds to Step 3. The objective medical evidence of record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, it must be determined whether or not claimant has the ability to perform his past relevant work. The claimant has a history of light to medium unskilled to skilled employment. There is objective medical evidence to support the contention that the claimant would be unable to continue to perform his past relevant work. The claimant's treating physician, [REDACTED], submitted a medical needs form, dated November 18, 2010 in which the doctor opined that the claimant would be unable to work at any occupation for his lifetime as a result of his impairments (see Department Exhibit A pages 69-70). Furthermore, at the hearing, the claimant testified that he was able stand for a period of ten minutes and to walk for a period of fifteen minutes but could do no more due to fatigue and shortness of breath. He further testified that he becomes light headed 3-4 times per day and especially when he switches positions. The claimant stated that he would only be able to carry 4-5 pounds and that he could not do so repetitively due to fatigue. He further testified that he wakes up every two hours during the night and that he periodically naps during the day due to lack of sleep. This Administrative Law Judge credits the testimony of the claimant with respect to his physical limitations as the objective medical evidence of record supports the claimant's statements as to his physical limitations. Based on the objective medical evidence of record, this Administrative Law Judge finds that the claimant would not have the residual functional capacity to perform light to medium work. Therefore, the

claimant is unable to perform his past relevant work and as such is not precluded from a finding of disability at Step 4. Accordingly, the analysis will continue.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy. This Administrative Law Judge finds that the objective medical evidence on the record does not support the finding that the claimant still retains the residual functional capacity to perform other work. The objective medical evidence of record shows that the claimant has been diagnosed continuously with congestive heart failure since October 2010. The claimant's EKGs performed between October 2010 and June 2011 show that he was suffering from severe LV dysfunction with and that his ejection fraction did not surpass 20%. Although the claimant did have an ICD implanted in June of 2011, he continued to experience symptoms of heart failure and testified that he is still physically limited by his condition. The claimant's testimony as to his physical limitations is supported by the objective medical evidence of record as well as the statement made by his treating physician. Therefore, the evidence of record does not support the finding that the claimant retains the residual functional capacity to perform other work. As such, the claimant is entitled to a finding of disability at Step 5. The claimant meets the statutory standard of disability for MA-P.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the MA-P disability standard.

Accordingly, the department's decision is **REVERSED**.

It is further ORDERED that if the claimant is otherwise eligible for MA-P benefits, the department shall review his eligibility for disability benefits in one year from the date this decision and order is mailed.

/s/_____

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 6, 2012

Date Mailed: January 6, 2012

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 mailing 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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