

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-39440
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
November 29, 2011
Branch County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on May 31, 2011. After due notice, a telephone hearing was held on November 29, 2011. Claimant, represented by [REDACTED], personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On December 20, 2011, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-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) On September 9, 2010, Claimant applied for MA-P and Retro-MA.
- (2) On March 4, 2011, the Medical Review Team (MRT) denied Claimant's MA application stating Claimant is capable past relevant work, pursuant to 20 CFR 416.920(E). (Department Exhibit A, pages 1-2).
- (3) On March 10, 2011, the department caseworker sent Claimant notice that his application was denied.

- (4) On May 31, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 22, 2011 and December 20, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits stating Claimant retains the residual functional capacity to perform past relevant work. (Department Exhibit B, page 1; Department Exhibit C, page 1).
- (6) Claimant has a history of chronic obstructive pulmonary disease (COPD), pulmonary embolism, degenerative disc disease, atherosclerosis, hyperlipidemia, hypertension, dyspnea, deep vein thrombosis (DVT), renal failure and emphysema.
- (7) On July 9, 2010, Claimant went to the hospital due to increased shortness of breath beginning four days ago. He was admitted for observation and possible coronary artery disease. His chest CT scan showed two spots, wedge-shaped, consistent with a pulmonary embolism. A chest examination found his chest was slightly increased anterior/posterior diameter. There was a prolonged expiratory phase. The dullness of the diaphragm was approximately at T11. An examination of the extremities revealed tenderness in the left calf on palpation and tenderness in the femoral area of his femoral vein. He was assessed with a pulmonary embolism with two emboli. Source was left leg thrombophlebitis. He was admitted and continued on Heparin, and also started on Coumadin. A 2-D echocardiogram revealed an ejection fraction of 55%. The CT angiogram of the thorax revealed multiple pulmonary emboli involving the right pulmonary artery and its segmental and subsegmental branches supplying right upper, lower and middle lobes. Marked chronic obstructive pulmonary disease changes with linear atelectasis/scarring in bilateral lobes. Ultrasound of the lower extremities indicated a left lower extremity deep vein thrombosis. His INR on the day of discharge was 2.30. He was sent home on a prednisone taper. A respiratory therapy consult was scheduled to evaluate his resting and walking oxygen requirements. (Department Exhibit A, pages 23-33).
- (8) On August 19, 2010, Claimant saw his doctor for follow-up of pulmonary embolism and infarction. His musculoskeletal exam was positive for back pain with range of motion. (Department Exhibit A, pages 34-36).
- (9) On August 27, 2010, Claimant's lumbar spine x-rays showed degenerative disc disease and facet arthropathy at L5-S1 and atherosclerosis. (Department Exhibit A, page 43).
- (10) On September 21, 2010, Claimant's FEV1 was 1.25 and 1.12. (Claimant Exhibit A, page 34).

- (11) On November 16, 2010, Claimant saw his doctor for follow-up of his COPD. He presented with Coumadin. Medical exam revealed back pain with range of motion, sleep disturbances and decreased breath sounds throughout. His blood pressure was 127/84 and his oxygen saturation was 94%. (Claimant Exhibit A, pages 23-25).
- (12) On January 12, 2011, Claimant saw his doctor for follow-up visit for his COPD. He stopped taking the Coumadin 1/6/11, because that was his 6 month marker in regard to the COPD. It is associated with dyspnea. Due to the cold weather, he takes various combinations of inhalers depending on where he gets his free samples. The medical examination revealed back pain and sleep disturbances. His blood pressure was 131/88 and his oxygen saturation was 93%. (Claimant Exhibit A, pages 18-20).
- (13) On January 25, 2011, Claimant was evaluated by an independent medical examiner on behalf of the department. The doctor found that Claimant's physical examination was nearly normal for his age with only a slightly reduced range of motion on straight leg raising. His breathing was unlabored and he was comfortable throughout the exam. (Department Exhibit A, pages 3-11).
- (14) On February 13, 2011, Claimant presented to the emergency department with complaints of intermittent chest pains beginning the day before. Past medical history was significant for pulmonary embolisms. Initial EKG showed a sinus rhythm of 73, normal access. There were multiple pre-ventricular contractions noted as well as nonspecific ST-T wave changes. Repeat EKG showed a rate of 59, sinus rhythm. PVCs were also noted once again. Claimant was admitted to Chest Pain Pathway for a cardiology consult. A cardiac catheterization was performed radially and did not reveal any significant disease. He was discharged on February 15, 2011 with instructions to follow-up with primary physician. (Claimant Exhibit A, pages 3-11).
- (15) On February 22, 2011, Claimant saw his doctor for follow-up of his emphysema after his hospital stay. His breathing was better since last weeks' hospitalization where he had a heart catheterization. He has a 20% blockage in one artery. No clots in leg or lungs. Medical exam found he was suffering back pain with range of motion, sleep disturbances and decreased breath sounds. His blood pressure was 138/84. Oxygen saturation 94%. (Claimant Exhibit A, pages 15-17).
- (16) On May 3, 2011, Claimant saw his doctor complaining of shortness of breath. Respiratory exam revealed decreased breath sounds throughout. His blood pressure was 137/94. Oxygen saturation 91%. He was prescribed oxygen, in addition to his Prednisone, Tylenol with Codeine,

Atrovent, Ventolin, Symbicort, Advair, Combivent, Lisinopril, Pravachol, and aspirin. (Claimant Exhibit A, pages 12-14).

- (17) Claimant is a 59 year old man whose birthday is [REDACTED]. Claimant is 6'0" tall and weighs 217 lbs. Claimant completed high school. Claimant last worked in October 1998.
- (18) Claimant had applied for Social Security disability at the time of the hearing.

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 Reference Tables Manual (RFT).

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.

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).

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).

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).

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).

Based on Finding of Fact #1-#24 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his respiratory impairments meet or equal Listing 3.02(A):

3.02 Chronic pulmonary insufficiency

A. Chronic obstructive pulmonary disease due to any cause, with the FEV₁ equal to or less than the values specified in table I corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Table I

Height without Shoes (centimeters)	Height without Shoes (inches)	FEV₁ Equal to or less than (L,BTPS)
154 or less	60 or less	1.05
155-160	61-63	1.15
161-165	64-65	1.25
166-170	66-67	1.35
171-175	68-69	1.45
176-180	70-71	1.55
181 or more	72 or more	1.65

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in deciding at application Claimant was not disabled for potential MA and Retro-MA eligibility purposes.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and processing to determine whether Claimant met all of the other financial and non-financial eligibility factors necessary to qualify for assistance under his September 9, 2010 MA/Retro-MA application.

It is SO ORDERED.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 1/13/12

Date Mailed: 1/13/12

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.

VLA/ds

