

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.: 2008-22815
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 30, 2009
Wayne County DHS (55)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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, a hearing was held on September 30, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the 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 received, reviewed, and entered as Claimant Exhibits A, B, and C. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits on October 10, 2007.
2. On January 3, 2008, the Medical Review Team ("MRT") deferred the disability determination requesting additional medical evidence. (Exhibit 1, p. 5)

3. On March 7, 2008, the MRT found the Claimant not disabled. (Exhibit 1, pp. 3, 4)
4. On March 17, 2008, the Department notified the Claimant of the MRT determination. (Exhibit 1, p. 1)
5. On June 10, 2008, the Department received the Claimant's timely written request for hearing.
6. On June 30, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)
7. The Claimant's alleged physical disabling impairments are due to back pain, hypertension, abdominal pain, acute pancreatitis, HIV, hypokalemia, and Hepatitis C.
8. The Claimant has not alleged any mental disabling impairment(s).
9. The Claimant is 50 years old with a [REDACTED] birth date; is 5'9" in height; and weighs approximately 130 pounds.
10. The Claimant has a limited education and an employment history of work in a car wash and as a dishwasher.
11. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formerly known as the Family Independence Agency, 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 Bridges Reference Manual ("BRM").

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) 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c) (3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR

416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work

experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability based on back pain, hypertension, abdominal pain, acute pancreatitis, HIV, hypokalemia, and Hepatitis C.

On [REDACTED], the Claimant was admitted to the hospital with complaints of mid-abdominal pain, nausea, and vomiting. The Claimant's history of HIV disease and recurrent alcohol-induced pancreatitis was noted.

On [REDACTED], the Claimant was admitted to the hospital with complaints of abdominal pain. The Claimant was discharged on [REDACTED] with the diagnoses of acute pancreatitis, human immunodeficiency virus ("HIV") disease, alcohol dependence, hypertension, anemia, hypopotassemia, diarrhea.

On [REDACTED], the Claimant presented to the hospital with complaints of abdominal pain, nausea, and vomiting. On [REDACTED], the Claimant's CD 4 count was 170. The Claimant was discharged on [REDACTED] with the diagnoses of acute pancreatitis, hypertension with poor control on admission, and HIV.

On [REDACTED], the Claimant's CD 4 count was 167.

On [REDACTED], the Claimant's CD 4 count was 200.

On [REDACTED], the Claimant sought treatment for abdominal pain.

On [REDACTED], the Claimant sought treatment for abdominal pain.

On [REDACTED], the Claimant presented to the clinic for further evaluation of his AIDS and pancreatitis. The CD 4 count was 208 with a viral load of 56,226. An antiretroviral therapy was recommended.

On [REDACTED], the Claimant presented to the hospital with complaints of severe abdominal pain, nausea, and vomiting. The Claimant was discharged on [REDACTED] with the diagnoses of acute pancreatitis, history of chronic pancreatitis, HIV, alcohol abuse, nicotine dependence, anemia, and increased alanine aminotransferase.

On [REDACTED], the Claimant sought treatment for shortness of breath.

On [REDACTED], the Claimant was treated for a right foot wound which was positive for MRSA. The Claimant was discharged the following day.

On [REDACTED], the Claimant presented to the clinic for a follow-up appointment for his frostbite. The physical examination found significant swelling and erythema. The Claimant was treated and prescribed pain medication.

On [REDACTED], the Claimant presented to the clinic for a follow-up appointment for his frostbite to his feet. The physical examination revealed extensive wounds to the bilaterally feet. The area was cleansed with saline and loose skin peeled off. The Claimant was prescribed pain medication and he was found to have an AIDS diagnosis by the CD 4 criteria which was 156 at that time.

On [REDACTED], the Claimant presented to the emergency room with complaints of abdominal pain and vomiting. The Claimant was intoxicated. The Claimant was admitted with pancreatitis and persistent pain. The Claimant was discharged on [REDACTED] with the diagnoses of pancreatitis (acute and chronic), cellulitis of the right foot (secondary to frost bite), hypertension, microcytic anemia (Chronis), alcohol intoxication/abuse, and HIV.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some objective medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts disabling impairments due to back pain, hypertension, abdominal pain, acute pancreatitis, HIV, hypokalemia, and Hepatitis C.

Listing 14.08 defines human immunodeficiency virus infection. To meet this listing, an individual must provide supporting documentation of the diagnosis and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (for example, caused by *M. avium-intracellulare*, *M. kansasii*, or *M. tuberculosis*) at site other than the lungs, skin, or cervical or hilar lymph nodes, or pulmonary tuberculosis resistant to treatment; or
2. Nocardiosis; or
3. *Salmonella* bacteremia, recurrent non-typhoid; or

4. Multiple or recurrent bacterial infections, including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment three or more times in a 12-month period.

OR

B. Fungal infections:

1. Aspergillosis; or
2. Candidiasis involving the esophagus, trachea, bronchi, or lungs, or at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or
3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or
4. Cryptococcosis, at a site other than the lungs (for example, cryptococcal meningitis); or
5. Histoplasmosis, at a site other than the lungs or lymph nodes; or
6. Mucormycosis; or
7. *Pneumocystis* pneumonia or extrapulmonary *Pneumocystis* infection.

OR

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or
2. Strongyloidiasis, extra-intestinal; or
3. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

OR

D. Viral infections:

1. *Cytomegalovirus* disease (documented as described in 14.00F3b(ii)) at a site other than the liver, spleen, or lymph nodes; or
2. Herpes simplex virus causing:
 - a. Mucocutaneous infection (for example, oral, genital, perianal) lasting for 1 month or longer; or
 - b. Infection at a site other than the skin or mucous membranes (for example, bronchitis, pneumonitis, esophagitis, or encephalitis); or
 - c. Disseminated infection; or

3. Herpes zoster:
 - a. Disseminated; or
 - b. With multidermatomal eruptions that are resistant to treatment; or
4. Progressive multifocal leukoencephalopathy.

OR

E. Malignant neoplasms:

1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or
2. Kaposi's sarcoma with:
 - a. Extensive oral lesions; or
 - b. Involvement of the gastrointestinal tract, lungs, or other visceral organs; or
3. Lymphoma (for example, primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other non-Hodgkin's lymphoma, Hodgkin's disease); or
4. Squamous cell carcinoma of the anal canal or anal margin.

OR

- F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3, above), with extensive fungating or ulcerating lesions not responding to treatment (for example, dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal *Candida*, condyloma caused by human *Papillomavirus*, genital ulcerative disease).

OR

- G. HIV encephalopathy, characterized by cognitive or motor dysfunction that limits function and progresses.

OR

- H. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (computed based on pounds, kilograms, or body mass index (BMI)) or other significant involuntary weight loss as described in 14.00F5, and in the absence of a concurrent illness that could explain the findings. With either:

1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or

2. Chronic weakness and documented fever greater than 38°C (100.4°F) for the majority of 1 month or longer.

OR

- I. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.

OR

- J. One or more of the following infections (other than described in A-I above). The infection(s) must either be resistant to treatment or require hospitalization or intravenous treatment three or more times in a 12-month period.

1. Sepsis; or
2. Meningitis; or
3. Pneumonia; or
4. Septic arthritis; or
5. Endocarditis; or
6. Sinusitis documented by appropriate medically acceptable imaging.

OR

- K. Repeated (as defined in 14.00I3) manifestations of HIV infection, including those listed in 14.08A-J, but without the requisite findings for those listings (for example, carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08I), or other manifestations (for example, oral hairy leukoplakia, myositis, pancreatitis, hepatitis, peripheral neuropathy, glucose intolerance, muscle weakness, cognitive or other mental limitation) resulting in significant, documented symptoms or signs (for example, severe fatigue, fever, malaise, involuntary weight loss, pain, night sweats, nausea, vomiting, headaches, or insomnia) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

In this case, the objective evidence reveals several hospitalizations for pancreatitis, nausea, vomiting, diarrhea, weight loss, weakness, and fatigue. The Claimant's CD 4 count has ranged below 200 with his viral load above 10,000. Complications regarding

the Claimant's medication regime were documented due to problems relating to the Claimant's Hepatitis C. The objective medical records establish the Claimant has a history of alcohol abuse. In consideration of the Claimant's other severe impairments as detailed above, it is found that the Claimant's functional limitations would remain independent of the abuse. 20 CFR 416.935 Ultimately, the Claimant is found disabled based on Listing 14.08, at Step 3 with not further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the October 10, 2007 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in October 2011 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 9/28/2010

Date Mailed: 9/28/2010

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

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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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