

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: 2008-27837

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 12, 2009

Macomb County DHS

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 conducted in [REDACTED] on Thursday, February 12, 2009. The Claimant is deceased. [REDACTED] and [REDACTED] appeared and testified. The Claimant, as well as [REDACTED], was/is represented by [REDACTED] of [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P"), Retro MA-P, and State Disability Assistance ("SDA") benefit programs.

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P, Retro MA-P and SDA benefits on June 9, 2008.

2. On July 2, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant lacked duration of 90 days or more for SDA, and lacked duration for MA-P purposes. (Exhibit 1, pp. 1, 2)

3. On July 9, 2008, the Department sent the Claimant an eligibility notice informing the Claimant that his MA-P and SDA benefits were denied.

4. On October 3, 2008, the Department received the Claimant’s Request for Hearing protesting the denial of benefits.

5. On August 20, 2008, the State Hearing Review Team (“SHRT”) found the Claimant not disabled based upon insufficient evidence.

6. The Claimant’s alleged disabling physical impairments are due to liver disease, ascites, perforated colon, and chronic obstructive pulmonary disease (“COPD”).

7. On [REDACTED], the Claimant died at the age of 49.

8. The Claimant’s employment history consists of unskilled, general laborer positions.

9. The Claimant’s impairment(s) lasted continuously for a period longer than 12 months.

#### 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”), formally known as the Family Independence Agency, 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”).

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 416.929(a)

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 applicants 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)

As outlined above, the first step looks at the individual's current work activity. 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) In the record presented, the decedent last worked in 2004 thus was not involved

in a substantial gainful activity. The Claimant is not disqualified from receipt of 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 May of 2008, the Claimant underwent a paracentesis which removed approximately 4 liters of fluid.

On August 31, 2008, the Claimant was admitted to [REDACTED] with "profound septicemia and acute respiratory failure." The Claimant asserted complaints of abdominal pain, nausea, vomiting, fatigue, intermittent fevers, and increased abdominal swelling. A CT scan revealed a large degree of ascitic fluid and possible bowel perforation requiring immediate surgery. A paracentesis was performed with approximately 5.5 liters of fluid removed. After the exploratory laparotomy, the Claimant decompensated and was placed on a ventilator. CT of the chest revealed an enlarged heart. During the Claimant's stay, he required a blood transfusion and fluid resuscitation on multiple occurrences. A colostomy was also required. On October 20, 2008, the Claimant was discharged to a rehab facility.

On November 5, 2008, the Claimant was examined by a D.O. regarding possible closure of his abdomen. The D.O. opined that the Claimant was at the end-stage of liver disease and was diabetic. The Claimant passed away the following day.

The Claimant alleged disabling physical impairments due to liver disease, ascites, perforated colon, ABD COPD. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In this case, the Claimant presented medical evidence establishing that he did have physical limitations on his ability to perform basic work activities. The medical evidence established that the Claimant had an impairment, or combination thereof, that had more than a *de minimis* effect on the Claimant's

basic work activities. Further, the impairment(s) 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. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 5.00 defines digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1

Listing 5.05 defines chronic liver disease and requires:

- A. Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

- B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least 2 evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:
  - 1. Paracentesis or thoracentesis; or
  - 2. Appropriate medically acceptable imaging or physical examination and one of the following:
    - a. Serum albumin of 3.0 g/dL or less; or

- b. International Normalized Ratio (INR) of at least 1.5.

OR

- C. Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm<sup>3</sup>.

OR

- D. Hepatorenal syndrome as described in 5.00D8, with one of the following:

- 1. Serum creatinine elevation of at least 2 mg/dL; or
- 2. Oliguria with 24-hour urine output less than 500 mL; or
- 3. Sodium retention with urine sodium less than 10 mEq per liter.

OR

- E. Hepatopulmonary syndrome as described in 5.00D9, with:

- 1. Arterial oxygenation (PaO<sub>2</sub>) on room air of:
  - a. 60 mm Hg or less, at test sites less than 3000 feet above sea level, or
  - b. 55 mm Hg or less, at test sites from 3000 to 6000 feet, or
  - c. 50 mm Hg or less, at test sites above 6000 feet; or
- 2. Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan.

OR

- F. Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

- 1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or

coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and

2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or
3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1:
  - a. Asterixis or other fluctuating physical neurological abnormalities; or
  - b. Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or
  - c. Serum albumin of 3.0 g/dL or less; or
  - d. International Normalized Ratio (INR) of 1.5 or greater.

OR

- G. End stage liver disease with SSA CLD scores of 22 or greater calculated as described in 5.00D11. Consider under a disability from at least the date of the first score.

As stated, the Claimant alleged disability based upon chronic liver disease, ascites, perforated colon requiring a colostomy, and COPD. Medical evidence presented established that the Claimant had a history of liver disease, nausea, vomiting, stomach pain, ascites, all which required extended hospitalization, to include at least two paracentesis and a colostomy. Ultimately, based upon the hearing record, it is found that the Claimant's impairments met or were the equivalent of Listing 5.05. Based upon the submitted medical documentation, the Claimant's impairment(s) resulted in death. Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program

purusant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, since the Claimant was found disabled for the purposes of the MA-P program, the Claimant is disabled for purposes of the SDA program.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant was disabled for purposes of the Medical Assistance program and the State Disability Assistance program for the period from May 2008 through his date of death, November 6, 2008.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the June 9, 2008 application, which included Retro MA-P from May 2008, to determine if all other non-medical criteria are met and inform the Claimant’s spouse and authorized representative of the determination.
3. The Department shall supplement the Claimant (surviving spouse) with any lost benefits the Claimant was otherwise entitled to receive for the period from May 2008 through November 6, 2008 in accordance with Department policy.

/s/  
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Colleen M. Mamelka  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

**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 the Circuit 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.

CMM

cc:

[REDACTED]