

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.: 2009-10024
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 9, 2009
Washtenaw County DHS (20)

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 in Ypsilanti, Michigan on April 9, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] and [REDACTED] appeared on behalf of the Department.

At the Claimant's request, the record was extended to allow for the submission of further medical evidence. The additional medical information was received and marked as Exhibits A and B. This matter is now before the undersigned for a final decision.

ISSUES

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") retroactive from April 2008, 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 with retroactive benefits for April 2008 and SDA benefits on July 8, 2008.
2. On August 7, 2008, the Medical Review Team (“MRT”) deferred a disability determination in order for a pulmonary function study to be obtained as well as additional medical documentation. (Exhibit 1, pp. 50, 51)
3. On October 10, 2008, the Claimant was evaluated, as requested by the Department, by an Internist. (Exhibit 1, pp. 8 – 13, 15)
4. On November 12, 2008, the MRT determined the Claimant was not disabled finding the Claimant’s impairment(s) did not prevent employment of 90 days or more for SDA purposes, and finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp. 6, 7)
5. On November 18, 2008, the Department sent an eligibility notice to the Claimant informing him that he was found not disabled. (Exhibit 1, pp. 4, 5)
6. On December 2, 2008, the Department received the Claimant’s Request for Hearing protesting the determination that the Claimant was not disabled. (Exhibit 1, p. 2)
7. On January 26, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2, pp. 1, 2)
8. The Claimant’s alleged physical disabling impairments are due to severe chronic, persistent asthma, hypertension, and osteomyelitis.
9. The Claimant had not alleged mental disabling impairments.

10. At the time of hearing, the Claimant was 47 years old with a [REDACTED] birth date; was 5' 9" and weighed 207 pounds.
11. The Claimant completed through the 9th grade and subsequently obtained his GED.
12. The Claimant's work history consists of general labor type positions.
13. The Claimant's impairment has lasted, or is expected to last, continuously for a period of at least 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)

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) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in approximately 2001. 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 non-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 physical disability due in part to severe chronic, persistent asthma, hypertension, and osteomyelitis.

On [REDACTED] [REDACTED] the Claimant was referred to an eye clinic after being found with bilateral peripheral retinal holes.

On [REDACTED], the Claimant was evaluated for chronic left mandibular osteomyelitis in the presence of hardware. The infection of the left mandible was found stable on chronic amoxicillin suppression however a decision to continue the amoxicillin for 6 months was made.

On [REDACTED], the Claimant attended an asthma follow-up appointment. The assessment and plan was to increase the Claimant's medication as his asthma continued to be moderate-to-severe and persistent.

On [REDACTED], the Claimant presented to the emergency room for asthma exacerbation. The Claimant was given steroids and breathing treatments.

On [REDACTED], the Claimant attended an asthma follow-up appointment. The assessment and plan were to continue treatment for his asthma and hypertension.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as severe, chronic asthma, osteomyelitis of the jaw, hypertension, and hyperlipidemia. The Claimant was found able to occasionally lift/carry 20 pounds; stand and/or walk 2 hours during an 8-hour workday; and was able to perform repetitive actions with both hand/arms and feet/legs. The physician noted that the Claimant was primarily limited by breathing which would usually and consistently limit his exertional ability. The Claimant's chronic severe asthma would impact the Claimant's endurance/physical exertion and reliable attendance.

On [REDACTED], the Claimant attended an asthma follow-up treatment. The physical examination documented the lungs were significant for an expiratory wheeze. The Claimant's diagnoses of asthma and hypertension were also noted.

The [REDACTED] evaluation from the pulmonary clinic documented poor breath sounds bilaterally with wheezing. The spirometry results demonstrated an FEV₁ of 1.88 and a Forced Vital Capacity "FVC" of 4.12. Ultimately, the Claimant was found with severe, persistent asthma requiring a lifelong steroid dependence.

On [REDACTED], the Claimant was examined and found to have wheezing lungs on inspiration and expiration, and pain and swelling over his left mandible

On [REDACTED], the Claimant's attended a medication follow-up. The Claimant was found with GERD, severe asthma, hypertension, and prior left jaw osteomyelitis.

On [REDACTED], the Claimant attended a department ordered examination. The physical examination documented swelling of the left mandible with no external signs of infection and vesicular breathing with prolonged expirations with wheezing and ronchi heard. The pulmonary function test revealed restrictive and obstruct element with change after inhaler use. Ultimately, the Claimant was found with osteomyelitis mandible with pain; bronchial asthma, hypertension, and GERD. The Claimant's need for continuous care was noted.

On [REDACTED], the Claimant was evaluated at an allergy and immunology specialty clinic. The spirometry found the Claimant's FEV₁ down from 2.59 (on [REDACTED]) to 2.23 and the FVC down from 5.04 (on November 24th) to 3.79. The study was consistent with an obstructive process.

On [REDACTED], the Claimant was evaluated at an allergy clinic. The Claimant's asthma was documented as severe, persistent and uncontrolled. RAST testing revealed that the Claimant was allergic to grass, molds, weeds, dust mites, and aspergillus. The Claimant was found to be an "excellent candidate for Xolair, given his lack of response on maximal traditional therapy."

On [REDACTED], the Claimant was given a Xolair injection.

On [REDACTED], the Claimant presented to the emergency room due with difficulty in breathing. The Claimant was found to have an asthma exacerbation with nausea. The Claimant was given steroids and breathing treatments.

On [REDACTED], the Claimant was evaluated at a pulmonary clinic. The physical examination revealed bilateral wheezing and cough on forced expiration. Spirometry revealed an FEV₁ of 1.77 and a FVC of 4.11 reflecting “a severe obstructive ventilatory defect.”

On [REDACTED], the Claimant was treated for hypertension and severe persistent asthma.

On [REDACTED], the Claimant was referred to the department of internal medicine after he received a Xolair injection when his blood pressure was 190/110. The Claimant was found with hypertensive urgency (complicated by his financial constraints), and asthma.

On [REDACTED], the Claimant’s primary care physician authored a letter regarding the Claimant’s severe asthma and hypertension. His condition has worsened despite treatment to include treatment with a pulmonologist and allergist which required multiple treatments in the emergency room with high dosages of steroid treatment.

On [REDACTED], the Claimant presented to the hospital after being assaulted. Immediate intervention was not warranted and the Claimant was given pain medication and instructed to follow-up with maxillofacial surgery.

On [REDACTED], the Claimant returned for follow-up treatment where his pain medication was renewed and he was provided a referral to a maxillofacial surgical clinic.

On [REDACTED], the Claimant was examined. The examination revealed lateral inferior orbital rim fracture and nasal fracture. No surgical intervention was recommended.

On [REDACTED], a CT scan was performed which documented displaced fractures of the base of the right nasal bone, anterior right maxillary wall, and inferomedial right orbital wall. Additional fractures of the right maxillary sinus and nasal septum were not ruled out. Post-operative changes involving the mandible were noted as well.

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 objective medical evidence establishing that he does have some 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, or are expected to last, continuously for a twelve month period 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 has alleged disabling physical impairments due, in part, chronic, severe asthma. Listing 3.00 defines respiratory system impairments. Respiratory disorders, along with any associated impairment(s), must be established by medical evidence sufficient enough in detail to evaluate the severity of the impairment. 3.00A Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment. *Id.* A major criteria for determining the level of respiratory impairments that are episodic in nature, is the frequency and intensity of episodes that occur despite prescribed treatment. 3.00C Attacks of asthma, episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum), or respiratory failure as referred to in paragraph B of 3.03, 3.04, and 3.07, are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhalational bronchodilator therapy in a hospital, emergency room or equivalent setting. 3.00C Hospital admissions are defined as inpatient hospitalizations for

longer than 24 hours. *Id.* Medical evidence must include information documenting adherence to a prescribed regimen of treatment as well as a description of physical signs. *Id.* For asthma, medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction. *Id.*

Chronic asthmatic bronchitis (Listing 3.03A) is evaluated under Listing 3.02. Chronic obstructive pulmonary disease, due to any cause, meets Listing 3.02 if medical evidence establishes that the Claimant's forced expiratory volume (in one second) is equal to or less than 1.95 (based on the Claimant's 5' 7" height). Attacks of asthma and/or episodes of bronchitis as referred to in 3.03 and 3.07, in spite of prescribed treatment, that occur at least once every 2 months or at least six times a year are considered. Each in-patient hospitalization for longer than 24 hours counts as two attacks/episodes and an evaluation of at least 12 consecutive months must be used to determine the frequency of attacks/episodes. 3.03B; 3.07B For asthma, the medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction. 3.00C

In this case, the Claimant was treated over a dozen times for asthma exacerbation over the last 12-month period. Supporting medical records from each hospitalization/treatment, as well as records from the Claimant's treating physicians, document the Claimant's adherence to the prescribed regimen at home as well as a description of the Claimant's physical signs such as pain, shortness of breath, fever, etc. Ultimately, based upon the submitted medical documentation, it is found that the Claimant's physical disabling impairment meets the intent and severity requirements, or the equivalent thereof, of Listing 3.03. 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 pursuant 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 impairment 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, the Claimant is found disabled for purposes of the Medical Assistance (“MA-P”) program, therefore the Claimant’s is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance and State Disability Assistance programs.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the July 8, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.
3. The Department shall supplement the Claimant any lost benefits he 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 accordance department policy in July 2010.

/s/

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

Date Signed: 06/29/09

Date Mailed: 06/30/09

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 recip date of the rehearing decision.

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