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.: 2009-22822
Issue No.: 2009
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
July 30, 2009
Macomb 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 conducted from Warren, Michigan on July 30, 2009. The Claimant appeared and testified. The Claimant was represented by [redacted] of [redacted]. [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") program?

## 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 an application for public assistance seeking Medical Assistance ("MA-P") on June 23, 2008.

2. On January 6, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled for purposes of the MA-P benefits. (Exhibit 1, pp. 1, 2)
3. On January 14, 2009, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled.
4. The Department received the Claimant's timely written Request for Hearing.
5. On June 3, 2009, the State Hearing Review Team ("SHRT") determined the Claimant not disabled. (Exhibit 2)
6. The Claimant's alleged physical disabling impairment(s) are due to chronic pain, arthritis, asthma, chronic obstructive pulmonary disease, coronary artery disease, hypertension, congestive heart failure, diabetes mellitus with neuropathy, hypothyroid, edema, sand sleep apnea.
7. The Claimant has not alleged any mental impairment(s).
8. At the time of hearing, the Claimant was 56 years old with a [redacted] birth date; was 6' in height; and weighed 320 pounds.
9. The Claimant is a high school graduate with a work history in used car sales.
10. 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"), 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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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) 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)

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 Claimant is not involved in substantial gainful activity and last worked in February of 2008. Accordingly, the Claimant is not ineligible for disability 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 to chronic pain, arthritis, asthma, chronic obstructive pulmonary disease, coronary artery disease, hypertension, congestive heart failure, and diabetes mellitus with neuropathy, hypothyroid, edema, and sleep apnea.

On [redacted], the Claimant was admitted to the hospital and underwent a left heart catheterization with stent placement to the right coronary artery. The Claimant was discharged the following day with the diagnoses of chest pain, coronary artery disease, diabetes mellitus, hypertension, and renal insufficiency.

On [redacted], the Claimant was admitted to the hospital and underwent selective coronary angiography and percutaneous transluminal coronary angioplasty with stent placement in the left anterior descending artery without complication. The angioplasty procedure found the left anterior descending artery with 60-70% proximal mid stenosis and 30% narrowing of the circumflex artery. The right coronary artery proximal narrowing was 20% and 30% distal narrowing. As a result of the procedure, which the Claimant tolerated well, the initial 60-70% stenosis was reduced to less than 10%. The Claimant was discharged the following day with the diagnoses of coronary artery disease, diabetes mellitus, hypertension, and obesity.

On [redacted], a treating podiatrist authored a letter stating that the Claimant has treated since 2006 for neuropathy secondary to his diabetes. The letter continues that the Claimant has been treated with multiple medications without success. The symptoms are debilitating. The letter concludes with the plan to continue treatment for the Claimant's neuropathy however success in alleviating the symptoms was not expected.

On [redacted], a D.O. examined the Claimant resulting in a referral for a cardiac catheterization study. The physical examination was unremarkable.

On [redacted], a Medical Examination Report was completed by a cardiologist on behalf of the Claimant. The current diagnoses were listed as coronary artery disease, diabetes mellitus, hypertension, and COPD. The Claimant cardiac condition was documented as improving with no physical restrictions noted.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed in part as, coronary artery disease, high cholesterol, edema, morbid obesity, diabetic neuropathy, hypothyroid, and degenerative joint disease. The Claimant's condition was deteriorating and he was restricted to occasionally lifting/carrying 10 pounds; standing and/or walking less than 2 hours during an 8-hour workday with sitting limited to less than 6 hours during this same time period.

On [redacted], the Claimant was admitted to the hospital after complaints of increased shortness of breath, leg swelling, generalized weakness, and cough. The chest x-ray showed cardiomegaly. An echocardiogram revealed a mild to moderate pericardial effusion. The Claimant was discharged on [redacted] with the diagnoses of acute fluid overload with pericardial effusion, severe hypothyroidism, diabetes mellitus, hypertension, obesity, hyperlipidemia, and hypokalemic.

On [redacted], an echocardiogram was performed on the Claimant which documented grossly normal cardiac chamber sizes; moderate left ventricular hypertrophy with grossly preserved systolic function; and mild anterior and trace posterior pericardial effusion.

On [redacted], the Claimant's treating podiatrist authored a letter on behalf of the Claimant stating the Claimant's neuropathy is worse, secondary to his diabetes. Adherence to prescribed treatment was noted however nothing "has been very successful in helping alleviate his symptoms." The symptoms were found to be debilitating.

On [redacted], a treating physician authored a letter stating that the Claimant has been a patient of his for over eight years. The current diagnoses were listed as insulin dependent diabetes mellitus, COPD, hypothyroidism, hypertension, coronary artery disease (with stent placement), morbid obesity, diabetic neuropathy, renal insufficiency, severe obstructive sleep apnea, anemia, chronic pain, and anxiety. The D.O. opined that the Claimant's medical condition had (has) progressed to a level that prevents the Claimant from carrying out activities of daily living and/or hold a job. The Claimant's medical condition was documented as deteriorating at an accelerated rate. Adherence to prescribed treatment was also noted.

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 medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that 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 physical disabling impairments due, in part, to chronic pain and arthritis. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch

or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on

> appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. The medical records document the Claimant's chronic pain, degenerative joint disease, and overall weakness, however these same records are insufficient to meet the intent and severity requirement of a listed impairment as detailed above. Accordingly, the Claimant cannot be found disabled, or not disabled, under this listing.

The Claimant has alleged physical disabling impairments due in part to shortness of breath, asthma, and chronic obstructive pulmonary disease. 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 1.75 (based on the Claimant's 6' 0'' 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 medical records confirm that the Claimant has experienced shortness of breath and COPD however treatment for these conditions, thus objective medical records, are insufficient to meet the intent and severity requirement of a listed impairment within Listing 3.00 therefore, the Claimant cannot be found disabled, or not disabled, under this listing.

The Claimant asserts physical disabling impairments due in part, to coronary artery disease, cardiomegaly, and hypertension. Listing 4.00 defines cardiovascular impairment in part, as follows:

> . . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular impairment results from one or more of four consequences of heart disease:
> (i) Chronic heart failure or ventricular dysfunction.

(ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
(iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
(iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts. Cardiomyopathy is evaluated under 4.02, 4.04, 4.05 or 11.04 depending on its effects on the individual. 4.00H3

Listing 4.02 discusses chronic heart failure. To meet the required level of severity while on a regimen of prescribed treatment the following must be satisfied:

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with

normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

**AND**

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

   a. Dyspnea, fatigue, palpitations, or chest discomfort; or

   b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

   c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

   d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

Listing 4.04 discusses ischemic heart disease. If an individual does not receive treatment, an impairment is not found however, disability may be found if another impairment in combination with the cardiovascular impairment medically equals the severity of a listed

impairment or based on consideration of the individual's residual functional capacity and age, education, and work experience. 4.00B3 To meet the severity requirement of Listing 4.04 while on prescribed treatment, one of the following must be met:

A. Sign- or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less:

1. Horizontal or downsloping depression, in the absence of digitalis glycoside treatment or hypokalemia, of the ST segment of at least -0.10 millivolts (-1.0 mm) in at least 3 consecutive complexes that are on a level baseline in any lead other than a VR, and depression of at least -0.10 millivolts lasting for at least 1 minute of recovery; or

2. At least 0.1 millivolt (1 mm) ST elevation above resting baseline in non-infarct leads during both exercise and 1 or more minutes of recovery; or

3. Decrease of 10 mm Hg or more in systolic pressure below the baseline blood pressure or the preceding systolic pressure measured during exercise (see 4.00E9e) due to left ventricular dysfunction, despite an increase in workload; or

4. Documented ischemia at an exercise level equivalent to 5 METs or less on appropriate medically acceptable imaging, such as radionuclide perfusion scans or stress echocardiography.

**OR**

B. Three separate ischemic episodes, each requiring revascularization or not amenable to revascularization (see 4.00E9f), within a consecutive 12-month period (see 4.00A3e).

**OR**

C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing:

    a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or

    b. 70 percent or more narrowing of another nonbypassed coronary artery; or

    c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or

    d. 50 percent or more narrowing of at least two nonbypassed coronary arteries; or

    e. 70 percent or more narrowing of a bypass graft vessel; and

2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

Listing 4.05 defines recurrent arrhythmias, not related to reversible causes such as electrolyte abnormalities or digitalis glycoside or antiarrhythmic drug toxicity, resulting in uncontrolled, recurrent episodes of cardiac syncope or near syncope (see 4.00F3b), despite prescribed treatment (see 4.00B3 if there is no prescribed treatment), and documented by resting or ambulatory (Holter) electrocardiography, or by other appropriate medically acceptable testing, coincident with the occurrence of syncope or near syncope.

In this case, the objective medical records document the Claimant's coronary artery disease, cardiomegaly, and hypertension. There was no evidence of systolic or diastolic failure or records establishing that an exercise tolerance test meets the requirements of 4.04A. Further, the Claimant has not had three separate ischemic episodes, and although the record documents coronary artery disease, the angiographic evidence does not meet the intent and severity requirement as detailed in 4.04C1. The Claimant has hypertension with heart complications, as well as cardiomegaly, however, the objective medical records do not support a finding of disabled or not disabled. Ultimately, after review of the medical records, it is found the

submitted record is insufficient to meet the intent and severity requirement of a listing impairment within 4.00 as detailed above.

The Claimant also asserted disability due to his sleep apnea and anemia. After review of the entire record it is found that the objective medical records do not support a finding of disabled based upon these conditions.

The Claimant also asserts physical disabling impairments due to diabetes mellitus with neuropathy. Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

> A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
>
> B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or $pC0_2$ or bicarbonate levels); or
>
> C. *Retinitis proliferans;* evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations establish a neurological impairment. 11.00C The degree of interference with locomotion and/or interference with the use of fingers, hands, and arms are considered. *Id.* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. 2.00A1 A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or to perceive visual stimuli in the peripheral extent of vision. *Id.* The loss of visual acuity is met when vision in the better eye

after best correction is 20/200 or less. 2.02 Similarly, the loss of visual efficiency is established when the better eye of 20% or less after best correction.

On August 24, 1999, the Social Security Administration deleted Listing 9.09 regarding obesity from the Listing of Impairments. SSR 02-1p In conjunction, the final rule in the Federal Register deleting 9.09, added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings that provide guidance regarding the potential effects obesity has in causing or contributing to impairments in those body systems. *Id.* Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal system, and disturbance of this system can be a major cause of disability in individuals with obesity. 1.00Q The combined effects of obesity with musculoskeletal impairments may be greater than the effects of each of the impairments considered separately. *Id.* Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments (and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity) any additional and cumulative effects of obesity is considered. *Id.* The National Institute of Health (NIH) established medical criteria for the diagnosis of obesity in its *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults* (NIH Publication No. 98-4083, September 1998). SSR 02-1p These guidelines classify overweight and obesity in adults according to Body Mass Index ("BMI") which is the ratio of an individual's weight in kilograms to the square of his/her height in meters. *Id.* For adults, the *Clinical Guidelines* describe a BMI of 25-29.9 as "overweight" with obesity being 30.0 or above. *Id.* The guidelines recognize three levels of obesity. Level I includes BMIs of 30.0-34.9; Level 2 includes BMIs of 35.0-39.9; and Level 3 (termed "extreme" obesity) includes BMIs of 40.0 or above. *Id.*

In this case, the Claimant's obesity and diabetes mellitus with neuropathy is documented through treatment records from long-term treating physicians. The Claimant's podiatrist indicated that the Claimant's neuropathy continues despite treatment noting that the symptoms are debilitating. The treating orthopedic opined that the Claimant's medical condition has progressed to the level where the Claimant is unable to carry out his activities of daily living and/or work noting that his condition was deteriorating at an accelerated rate. The Claimant's neuropathy affects both lower extremities. The Claimant's BMI is at Level 3 and he is only able to walk short distances without rest or assistance. Ultimately, in consideration of the Claimant's multiple medical conditions coupled with obesity, as well as the treating source opinions, it is found that the Claimant's impairments meet, or are the equivalent thereof, a listed impairment, specifically, Listing 9.08 thus no further analysis is required.

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, 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 program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the June 23, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized 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 September 2010 in accordance with department policy.

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

Date Signed: _08/28/09______

Date Mailed: _08/31/09______

**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.

CMM/jlg

cc: