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.: 2009-31258
Issue No.: 2009
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
September 23, 2009
Monroe 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 held in Monroe, Michigan on September 23, 2009. The Claimant appeared and testified. The Claimant was represented by [redacted] of [redacted]. [redacted] and [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") benefit 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 March 17, 2009.

2. On April 23, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled for purposes of the MA-P program. (Exhibit 1, pp. 19, 20)

3. On April 28, 2009, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled. (Exhibit 1, p. 18)

4. On June 30, 2009, the Department received the Claimant's written Request for Hearing. (Exhibit 2)

5. On August 19, 2009, the State Hearing Review Team ("SHRT") determined the Claimant was not disabled. (Exhibit 4)

6. The Claimant's alleged physical disabling impairment(s) are due to chronic hip, knee, and shoulder, and elbow pain, shortness of breath, coronary artery disease, and congestive heart failure.

7. The Claimant's alleged mental impairments are due to depression and anxiety.

8. At the time of hearing, the Claimant was 44 years old with a [redacted] birth date; was 6'2" in height; and weighed 214 pounds.

9. The Claimant is a high school graduate with some college and a work history in roofing and framing, general laborer, and hi-lo driver.

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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.;* 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the

severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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 therefore 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 severe only if, regardless of a claimant's age, education, or work experience, the impairment would 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, in part, on the basis of chronic hip, knee, shoulder, and elbow pain, shortness of breath, coronary artery disease, congestive heart failure, depression, and anxiety.

By way of background, the Claimant's first infarct was in 2002 where one stent was placed. The second infarct was in 2005 and required 2 stents.

On [redacted], the Claimant presented to the emergency room with complaints of chest pain. The pre-operative ejection fraction was 30% with inferolateral akinesia and mild to moderate mitral regurgitation. Severe diffuse coronary artery disease was found. An emergency coronary artery bypass grafting x4 was performed. The post-operative diagnoses were critical three vessel coronary artery disease with occluded right coronary artery and evolving acute myocardial infarction, and left ventricular dysfunction.

On [redacted], the Claimant attended a follow-up appointment after his emergency coronary artery bypass grafting surgery. The Claimant was doing "relatively well" after his surgery with a request to stop smoking.

On [redacted], the Claimant attended a follow-up appointment. An echocardiogram to assess the LV function post-surgery was recommended as well as a stress test.

On [redacted], a Medical Examination Report was completed by a cardiologist on behalf of the Claimant. The current diagnoses were listed as acute myocardial infarction, chest pain, coronary artery disease, and coronary artery bypass x3. The physical examination documented severe cardiomyopathy with left ventricular functioning of 20%.

On [redacted] an echocardiogram was performed which revealed the left ventricular systolic function was moderate to severely reduced with moderate mitral regurgitation and moderate tricuspid valve insufficiency. The left ventricle ejection fraction was 25-30% with septal dyskinesis.

On [redacted], the Claimant presented to the cardiology clinic for a stress test. The Claimant exercised a total of 7 minutes when the test was terminated due to fatigue. Continued cardiac rehab was recommended.

On [redacted], the Claimant attended a medical evaluation with complaints of coronary artery disease, hypertension, dyslipidemia, chronic obstructive pulmonary disease ("questionable") and a problem with his left extremities. The physical examination documented a decreased range of motion in the Claimant's shoulder and elbow. The diagnoses were coronary artery disease, dyslipidemia, hypertension, shortness of breath, left arm trauma, and suspected recent tear of the left knee meniscus.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were coronary artery disease, substance abuse, GERD, dyslipidemia, 3 heart attacks, and unstable angina. The physical examination found the Claimant's gait impaired due to acute left knee injury noting he walked with a limp and required a brace; and his ejection fraction was less than 50%. The functional capacity documented the Claimant with a slight limitation in physical activity meaning he was comfortable at rest and

ordinary physical activity would result in fatigue, palpitation, dyspnea, or anginal pain. The Claimant's ordinary physical activity was moderately restricted with no strenuous efforts.

On [redacted], the Claimant attended a mental status examination. The Claimant was diagnosed with polysubstance abuse and depression with a Global Assessment Functioning ("GAF") of 48. The Claimant's prognosis was guarded and he was determined not capable of managing his benefit funds. The Claimant was found able to engage in work-type activities of a moderate degree of complexity as his physical condition allows.

On [redacted], the Claimant presented to the cardiology clinic for a cardiac electrophysiology consultation for defibrillator implantation. The Claimant's left ventricular ejection fraction was noted as less than 25%. After examination, the Claimant was recommended for the defibrillator.

On [redacted], the Claimant presented to the hospital for a dual chamber defibrillator implantation. The Claimant was diagnosed with severe ischemic cardiomyopathy with left ventricular ejection fraction of less than 30%. The procedure went without complication.

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 and mental 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 has alleged physical and mental disabling impairments due to chronic hip, knee, and shoulder, and elbow pain, shortness of breath, coronary artery disease, congestive heart failure, depression, and anxiety.

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.

Listing 11.04 defines central nervous vascular accident ("CVS") and requires one or the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. 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).

In the record presented, the Claimant had two previous heart attacks, each requiring stents. On [redacted], the Claimant experience a third heart attack. At the time, the ejection fraction was 30%. The Claimant had four additional stents placed, for a total of seven. The Claimant attended follow-up treatment as prescribed and on [redacted], the cardiologist documented severe cardiomyopath with left ventricular functioning of 20%. Chest pain and coronary artery disease were also noted. The [redacted] echolcardiogram revealed the left ventricular ejection fraction of 25-30%. The Claimant attempted, but failed, to complete a stress test on [redacted]. On [redacted], the Claimant was recommended for a defibrillator noting the ejection fraction was less than 25%. The defibrillator was implanted on [redacted]. The Claimant was diagnosed with sever ischemic cardiomyopathy with the left ventricular ejection

fraction of less than 30%. In light of the foregoing, the Claimant's impairment meets, or is the equivalent thereof a listed impairment within 4.00, specifically 4.02. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the March 17, 2009 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 November 2010 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 10/21/09

Date Mailed: 10/21/09

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: [redacted]