

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.: 2009-8075
Issue No.: 2009; 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 9, 2009
Wayne County DHS (58)

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 hearing. After due notice, a hearing was conducted from [REDACTED] on March 9, 2009. The Claimant appeared and testified, along with his authorized hearing representative, [REDACTED] Mr. Guitard appeared on behalf of the Department.

At the Claimant's request, the record was extended to allow for the submission of additional medical documentation. The records were received, reviewed, and forwarded to the State Hearing Review Team for consideration. On April 24, 2009, the SHRT found the Claimant was not disabled for the period from August 2006 through April 2007, and was no longer disabled for purposes of continued entitlement of MA-P and SDA benefits effective October 1, 2008. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for the period from August 2006 through April 2007?

Whether the Department properly determined that the Claimant was no longer disabled for purposes continued entitlement to Medical Assistance (“MA-P”) and the State Disability Assistance (“SDA”) benefits effective October 1, 2008?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole Whether the Department properly determined that the Claimant was not disabled for purposes continued entitlement to Medical Assistance (“MA-P”) and the State Disability Assistance (“SDA”) benefits. e record, finds as material fact:

1. On August 28, 2006, the Department sent an Eligibility Notice to the Claimant regarding an August 16, 2006 application notifying the Claimant that the Medical Review Team (“MRT”) denied the Claimant’s application for the month of August 2006, finding the Claimant’s impairment lacks duration. (Exhibit 1, p. 179)
2. On November 28, 2006, the Claimant submitted an application for public assistance seeking MA-P, Retro MA-P from August 2006, and SDA benefits. (Exhibit 1, pp. 19 – 22, 36 – 50; 80 – 83; 168 – 178)
3. Several correspondence was sent from the Claimant’s authorized representative to the Department concerning various processing issues regarding the November 2006 application. (Exhibit 1, pp. 61 – 79; 147 – 167)
4. On May 18, 2007, the Department sent an Application Eligibility Notice to the Claimant informing the Claimant that his November 28, 2006 application was denied based upon the failure to submit the requested medical verifications by the due date. (Exhibit 1, pp. 60, 146)
5. In June 2007, the Claimant submitted another application for Medical Assistance benefits.

6. On June 26, 2007, the MRT approved the Claimant's June 2007 application finding the Claimant's impairment met or was the equivalent of Listing 4.02; approved retro MA-P from May 2007; and State Disability Assistance. (Exhibit 1, pp. 86 – 87)
7. The Claimant's review date was scheduled for June 2008.
8. On August 10, 2007, the Department received the Claimant's Request for Hearing protesting the denial of the November 28, 2006 application. (Exhibit 1, pp. 57, 60, 145)
9. A hearing was scheduled for January 9, 2008 at 1:30p.m. however was dismissed based upon a failure to appear. (Exhibit 1, p. 140, 143)
10. The Claimant's authorized representative was not contacted for the hearing and called the Department regarding not being called for the hearing. (Exhibit 1, p. 141)
11. As a result, the Department agreed to resubmit the November 28, 2006 application, along with supporting medical records, to the MRT for consideration. (Exhibit 6, p. 2 – 4)
12. On May 2, 2008, the MRT deferred the disability determination based upon insufficient documentation. (Exhibit 1, pp. 17, 18)
13. The Claimant's was scheduled for review in June of 2008.
14. On August 6, 2008, the MRT deferred the disability determination in order for the Claimant to attend a consultative examination and to obtain an updated Medical Examination Report. (Exhibit 1, p. 1)
15. On August 20, 2008, the Claimant was evaluated at the [REDACTED] by an Internist. (Exhibit 1, pp. 3 – 5)
16. On September 11, 2008, the Department determined the Claimant was not disabled finding the impairment(s) did not prevent employment for 90 days or more for SDA

purposes and finding the Claimant capable of performing other work for MA-P purposes.
(Exhibit 1, pp. 1, 2)

17. On September 16, 2008, the Department sent a Eligibility Notice to the Claimant informing the Claimant that the MRT had determined that he was no longer disabled thus not eligible for MA-P and SDA benefits. (Exhibit 2)
18. The September 16th denial also indicated that the denial applied to current and all past application months. (Exhibit 2)
19. On November 13, 2008, the Department received the Claimant's written hearing request. (Exhibit 3)
20. On January 12, 2009, the State Hearing Review Team ("SHRT") ultimately denied MA-P and SDA noting it was not clear whether this case was a new application or a review. (Exhibit 4)
21. The Claimant's alleged physical disabling impairments are due to chest pain with two prior heart attacks, shortness of breath, artery disease, extremity numbness, and stroke.
22. The Claimant has not alleged any mental disabling impairment(s).
23. The Claimant's impairment(s) have lasted, or expected to last, for a period of more than 12 months.
24. At the time of hearing, the Claimant was 51 years old with a [REDACTED] birth date; was 5' 4" and weighed approximately 175 pounds.
25. The Claimant completed through the 10th grade and has a prior work history as a janitor and general laborer.

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)

As a preliminary matter, this decision addresses two separate time periods; one regarding the time period prior to the Claimant’s initial approval, and the second regarding the Claimant’s continued eligibility after the May 2007 approval. In light of the fact that the sequential analysis

provided for in the federal regulations differs from an initial determination as opposed to whether continued entitlement exists, this decision is separated accordingly.

Initial Disability for the Period from August 2006 through April 2007.

When initially 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 previously stated, 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 2006. 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)

On August 9, 2006, the Claimant was admitted to Henry Ford Hospital after complaints of shortness of breath, sweating, speech problems and right-side weakness. The Claimant had not sought treatment for more than 10 years. An MRI revealed multiple small acute cortical infarcts involving the left frontal and parietal region. The Claimant was discharged on August 12, 2006 with a discharge diagnosis of nonparalytic stroke, congestive heart failure, multiple

acute cortical ischemic infarcts involving the left frontal and parietal regions. These conditions were complicated by hyperlipidemia, elevated liver enzymes, and acute renal failure. The prognosis was fair.

On May 26, 2007, the Claimant was admitted to [REDACTED] after complaints of shortness of breath and chest pain. Chest x-rays found cardiomegaly and pulmonary congestion. On June 4, 2007, the Claimant underwent an aortic valve replacement, coronary bypass, and replacement of ascending aorta. The Claimant was discharged on June 11, 2007 with a final diagnosis of acute myocardial infarction, aortic aneurysm, and aortic valve disorders. These conditions were complicated by the Claimant's hypertension.

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 had some physical limitations on his ability to perform basic work activities. Accordingly, 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 impairments has lasted continuously for twelve months, (Claimant was approved effective May 2007) 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 impairment(s) due to chest pain with two prior heart attacks, shortness of breath, artery disease, extremity numbness, and stroke. Appendix I discusses the analysis and criteria necessary to support a finding of a listed impairment. 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.* 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.

In this case, the Claimant's condition from August 2006 until May 2007 deteriorated as evidenced by the two hospitalizations. As previously noted, the Claimant was found to meet Listing 4.02 effective May 2007 based upon a June 2007 application date. The November 2006 application, which sought benefits retroactive from August 2006 was denied based upon the failure to return required documentation. The submitted record contains several communications during the period at issue detailing the submission of several requested documentation. Ultimately, in light of the submitted record, it is found that the Claimant was disabled for the

period from August 2006 through April 2007 and met, or was the medical equivalent of Listing 4.02. Accordingly, 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 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 for the period from August 2006 through April 2007, therefore the Claimant’s is found disabled for purposes of SDA benefits.

Continued Entitlement effective October 2007

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual’s disability has ended, the department will develop, along with the Claimant’s cooperation, a complete medical history covering at least the 12 months preceding the date the individual

signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to

perform past work is made. 20 CFR 416.994(b) (5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b) (5) (iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 which discusses the analysis and criteria necessary to support a finding of a listed impairment. 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:

- (v) Chronic heart failure or ventricular dysfunction.
- (vi) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
- (vii) 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.
- (viii) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

As noted above, the Claimant was previously found to have met the intent and severity requirement of Listing 4.02. This listing 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 11.00 defines adult neurological disabilities. Sensory or motor aphasia resulting in ineffective speech or communication or significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station occurring more than 3-months post vascular accident meet Listing 11.04. 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, frequently provides the sole or partial basis for decision in cases of neurological impairment. 11.00C The assessment of impairment depends on

the degree of interference with locomotion and/or interference with the use of fingers, hands and arms. *Id.*

On August 9, 2006, the Claimant was admitted to [REDACTED] after complaints of shortness of breath, sweating, speech problems and right-side weakness. The Claimant had not sought treatment for more than 10 years. An MRI revealed multiple small acute cortical infarcts involving the left frontal and parietal region. The Claimant was discharged on August 12, 2006 with a discharge diagnosis of nonparalytic stroke, congestive heart failure, multiple acute cortical ischemic infarcts involving the left frontal and parietal regions. These conditions were complicated by hyperlipidemia, elevated liver enzymes, and acute renal failure. The prognosis was fair.

On May 26, 2007, the Claimant was admitted to [REDACTED] after complaints of shortness of breath and chest pain. Chest x-rays found cardiomegaly and pulmonary congestion. On June 4, 2007, the Claimant underwent an aortic valve replacement, coronary bypass, and replacement of ascending aorta. The Claimant was discharged on June 11, 2007 with a final diagnosis of acute myocardial infarction, aortic aneurysm, and aortic valve disorders. These conditions were complicated by the Claimant's hypertension.

On July 16, 2008, the Claimant's primary care physician submitted a Medical Examination Report on the Claimant's behalf. The Claimant's impairments were listed as cardiac disease, coagulopathy, and hypertension. The Claimant's shortness of breath and chest pain was noted. The Claimant was found in stable condition but limited to lifting/carrying 10 pounds occasionally; standing and/or walking less than 2 hours of an 8 hour work day; sitting less than 6 hours during this same period. There were no limitations imposed on repetitive actions such as simple grasping, reaching, pushing, pulling, and/or fine manipulation, involving

both the Claimant's hands/arms. The Claimant was also found able to operate foot/leg controls with both legs.

On August 20, 2008, the Claimant was evaluated by an Internist for a Department ordered examination at the [REDACTED]. The physical examination found the Claimant's vision without glasses as "20/blurred" in both eyes and "20/blurred bilaterally." The Claimant was unable to read the chart. The dragging of the Claimant's left leg while walking was noted. The Claimant was diagnosed with hypertension, previous CVA with mild hemiparesis or weakness (a neurological examination was recommended), post cardiac bypass surgery, and chest pain. The Internist further noted that the Claimant needed medication and follow-up blood testing and should avoid any jobs involving "frequent climbing, prolonged standing, walking or carrying heavy weight, pushing or pulling." The Claimant was found able to perform a "sitting job" or a "job that does not involve too much physical labor."

On November 19, 2008, a Medical Examination Report was submitted on the Claimant's behalf based upon a chart review from July and August 2007 records. The current diagnoses were chest pain related to coronary artery disease, congestive heart failure, myocardial infarction, stroke, and prolonged blood clotting. The Claimant was found to be able to frequently lift less than 10 pounds while occasionally lifting 10 pounds. The Claimant was limited to standing and/or walking less than 2 hours in an 8-hour work day and sitting less than 6 hours during this same time period. Assistive devices were not needed for ambulation and the Claimant was able to meet his needs in the home.

In this case, the record is insufficient to support a finding of a finding of continued disability based upon Listing 4.02 and/or 11.04. Accordingly, a determination of whether the Claimant's condition has medically improved is necessary.

Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b) (1) (i) Here, the Claimant's treating physician lists his condition as stable. In addition, the consultative examination found the Claimant physically able to perform sedentary work. Whenever medical improvement is found, such as in this case, a determination of whether there has been an increase in the RFC based upon the impairment(s) that were present at the time of the most favorable medical determination is required.

RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations. To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual

capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

The Claimant's prior RFC is not known therefore federal regulations require a determination of whether an individual can engage in substantial gainful activity. 20 CFR 416.994(b) (2) (iv) (E) In this case, the Claimant previously worked as a general laborer. Previous work involved lifting up to 50 pounds with standing, bending, and stooping required. This employment is unskilled, medium work.

At the time of the hearing, the Claimant was 51 years old with a 10th grade education. For purposes of the MA program, the Claimant is considered to be approaching advanced age. The medical records and testimony establish that due to the Claimant's congestive heart failure, heart attacks, and/or stroke, he was, and remains, unable to perform past relevant work and is currently limited to, at best, unskilled sedentary work. Thus, the Claimant's medical improvement is not related to his ability to work therefore a determination of whether a listed exception applies is considered and found that substantial evidence does not show that the

Claimant is a beneficiary of advances in medical or vocational therapy; has undergone vocation therapy; new or improved diagnostic/evaluative techniques have demonstrated that the impairment(s) is not a disability as previously determined; or that the prior decision was in error. In addition, the record does not show that the prior determination was fraudulently obtained or that the Claimant cannot be located or failed to cooperate. There was no indication that the Claimant failed to follow prescribed treatment. Accordingly, the listed exceptions to medical improvement are not met. In light of the finding that the Claimant's medical improvement is not related to the ability to work and no listed exception is applicable, the Claimant's disability is found to have continue at Step 4.

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 continued Medical Assistance ("MA-P") entitlement, therefore the Claimant's is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant was disabled for purposes of the MA-P and SDA benefit programs for the

The Claimant may appeal the Decision and Order to Circuit Court 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/jlg

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