

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.: 2009-11931  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
May 4, 2009  
Wayne County DHS (59)

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 on Wednesday, May 4, 2009. The Claimant is deceased. [REDACTED], authorized representative of the decedent's spouse, appeared and testified.

ISSUES

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

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P, Retro MA-P and SDA benefits on March 6, 2006.

2. On April 26, 2007, the Medical Review Team (“MRT”) deferred the disability determination in order for the Department to schedule a psychiatric and physiatrist examination. (Exhibit 1, p. 1)
3. On [REDACTED], the Claimant attended the Department scheduled examinations at the [REDACTED]. (Exhibit 1, pp. 9 – 17,
4. On [REDACTED], the Claimant attended another department scheduled physiatrist evaluation at the [REDACTED]. (Exhibit 1, pp. 3 – 8)
5. On October 2, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding his impairment did not prevent employment for 90-days or more for SDA purposes, and finding the Claimant capable of performing other work for purposes of the MA-P program. (Exhibit 1, pp. 1, 2)
6. On October 6, 2008, the Department sent an Eligibility Notice to the Claimant informing him that his application for MA-P, Retro MA-P and SDA was denied. (Exhibit 1, p. 146)
7. In December of 2008, the Social Security Administration approved the Claimant’s SSI application with the onset date of August 2008.
8. On March 2, 2009, the SHRT found the Claimant disabled pursuant to the SSA determination effective March 2008. (Exhibit 2, pp. 1, 2)
9. On December 19, 2008, the Department received the Claimant’s Request for Hearing protesting the denial of benefits.
10. On [REDACTED], the Claimant passed away at the age of 51. (Exhibit 4)
11. On March 2, 2009, the SHRT found the Claimant not disabled for the period from December 2005 through February 2008 but disabled from March 2008 forward. (Exhibit 2, pp. 1, 2)

12. On [REDACTED], the Claimant's surviving spouse authorized [REDACTED], of [REDACTED] [REDACTED], Inc., to act on her behalf. (Exhibit 3)
13. The Claimant's alleged physical disabling impairment(s) were due to lung cancer and chronic obstructive pulmonary disease ("COPD").
14. Based upon the submitted records, the Claimant graduated from high school with some college and has a work history as a brick layer.
15. Based upon a June 2008 medical examination, the Claimant was 5' 11" and weighed 188 pounds.
16. The Claimant's impairments lasted continuously for more than a 12-month period and resulted in death.

#### CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment,

prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the decedent last worked in 2000 thus was not involved in a substantial gainful activity. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR

916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

*Id.* The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant asserted physical disabling impairment(s) due to lung cancer and COPD. The Claimant's Certificate of Death lists the cause of death on [REDACTED], [REDACTED] as small cell lung cancer.

In support of the Claimant's assertion of disability, older medical records from 2002 and 2004 were submitted that documented the Claimant's brain aneurysm which required surgical intervention as well as treatment for pneumonia and depression. Additionally, chest x-rays from [REDACTED], documented the Claimant's lung disease.

On [REDACTED], the Claimant was discharged from [REDACTED] after being treated for acute pancreatitis secondary to venous embolism and thrombosis of deep vessels of the lower extremity. The Claimant's lung disease was also noted. The Claimant's drug and alcohol abuse was documented.

On [REDACTED], the Claimant was admitted to [REDACTED] after being treated in the emergency room for acute mental status changes. Sonographic imaging revealed an abnormal study with varying degrees of compression noted within the common femoral and superficial femoral veins. An ultrasound of the abdomen showed an enlarged liver and an isoechoic structure within the splenic hilum which "may represent an accessory spleen." The CT scan of the abdomen and pelvis found an irregular nodular opacity in the left lung base. The CT scan of the thorax was performed to evaluate the left lung mass. The mass was suspicious for neoplasm and further evaluation was recommended. A biopsy of the Claimant's left lung was performed which documented the possibility of infectious and/or inflammatory process as well as possible malignant neoplasm. Clinical pathologic correlation was suggested. The Claimant was discharged on [REDACTED].

On [REDACTED], the Claimant attended a department scheduled psychiatrist appointment. As a result of the Claimant's history and physical examination, the Claimant was diagnosed with chronic back pain with a history of brain abscess which resulted in DVT in the left lower extremity with residual pain. A history of poor circulation in both legs with varicose veins was also noted.

On this same date, [REDACTED], the Claimant was evaluated by a psychiatrist. The Claimant's diagnoses were listed as intermittent explosive disorder; alcohol and heroin dependence; bipolar disorder not otherwise specified; and a Global Assessment Functioning

("GAF") of 65. The Claimant's prognosis was guarded and he was found unable to manage benefit funds.

On [REDACTED], the Claimant attended a department scheduled physiatrist evaluation. The physical examination revealed severe varicosity bilaterally with brawny skin discoloration. Muscle strength of both upper and lower extremities was 5/5. Ultimately, the Claimant was diagnosed with a history of cerebral abscess which required surgical intervention as well as treatment for DVT. Bipolar depression and varicose veins were also documented.

On [REDACTED], the Claimant was admitted to [REDACTED] after complaints of chest pain and shortness of breath. A CT scan documented a left lower lobe lesion and massive hilar adenopathy and mediastinal adenopathy. A CT guided biopsy was performed which confirmed the small cell lung cancer diagnoses, pneumonia, and COPD. The Claimant's drug and alcohol abuse was noted. The Claimant was discharged on [REDACTED].

On [REDACTED], the Claimant was admitted to [REDACTED] for treatment for pneumonia associated with lung cancer.

The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In this case, the Claimant presented medical evidence establishing that he did have physical limitations on his ability to perform basic work activities. The medical evidence established that the Claimant had an impairment, or combination thereof, that had more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairment(s) lasted continuously for twelve months. Therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1

of Subpart P of 20 CFR, Part 404. The Claimant has alleged disabling impairments due to lung cancer and COPD. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 13.00 discusses malignant neoplastic diseases. 13.00A The origin of the malignancy, the extent of involvement, the duration, frequency, and response to surgery, irradiation, chemotherapy, hormones, immunotherapy, bone marrow or stem cell transplantation are considered. 13.00B1-3 In addition, the effects of any post-therapeutic residuals are evaluated. 13.00B4 Listing 13.14 defines lung cancer as non-small-cell carcinoma or small-cell (oat cell) carcinoma. 13.14A, B Non-small-cell carcinoma is inoperable, unresectable, recurrent, or metastatic disease to or beyond the hilar nodes. 13.14A

The Claimant's lung disease was diagnosed as early as [REDACTED]. Although the objective medical records establish the Claimant had a past history of drug and alcohol abuse, the substance use was not a contributing factor material to the determination of disability and the Claimant's functional limitations would remain independent of the abuse. 20 CFR 416.935 The Certificate of Death lists the cause of death as small-cell lung cancer. Ultimately, the objective medical records establish that the Claimant's impairment which resulted in death met the intent and severity requirement of listing 13.14, Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets

federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant was disabled for purposes of the Medical Assistance program and the State Disability Assistance program effective December 2005.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the March 6, 2006 application, which included Retro MA-P from December 2005, to determine if all other non-medical criteria are met and inform the Claimant's spouse and her authorized representative of the determination.
3. The Department shall supplement the Claimant (surviving spouse) with any lost benefits the Claimant was otherwise entitled to receive in accordance with Department policy for the period from December 2005 through the Claimant's date of death.

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

Date Signed: 05/13/09

Date Mailed: 05/13/09

**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

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motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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