

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.: 2009-14765
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 29, 2009
Wayne County DHS (17)

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 Detroit, Michigan on April 29, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. Monica Hughes appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") 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 October 2, 2008.

2. On November 6, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment(s) did not prevent employment of 90 days or more for SDA purposes, and found the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp. 1, 2)
3. On November 6, 2008, the Department sent the Claimant an Eligibility Notice informing him that he was found not disabled.
4. On January 27, 2009, the Department received the Claimant’s written request for hearing protesting the determination that he was not disabled. (Exhibit A-1)
5. On March 23, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2, pp. 1, 2)
6. The Claimant’s alleged physical disabling impairments are due to an aortic aneurysm, chest pain, high blood pressure, hypertensive kidney disease, gout, arthritis, chronic back pain, shortness of breath, and chronic obstructive pulmonary disease (“COPD”).
7. At the time of hearing, the Claimant was 42 years old with a July 12, 1966 birth date; was 5’ 7” and weighed 180 pounds.
8. The Claimant is a high school graduate with an employment history as a maintenance worker.
9. The Claimant’s impairment(s) have lasted, or are expected to last, 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-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)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work

experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in March of 2008. 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 alleges disability on the basis of aortic aneurysm, chest pain, high blood pressure, hypertensive kidney disease, gout, arthritis, chronic back pain, shortness of breath, and chronic obstructive pulmonary disease ("COPD").

On March 18, 2008, the Claimant presented to [REDACTED] with complaints of ankle pain. The Claimant was treated for pain with a discharge diagnosis of gout.

On March 25, 2008, the Claimant presented to [REDACTED] with complaints of knee pain and abdominal/gastrointestinal pain. An arthrocentesis was performed and the Claimant was treated with [REDACTED] and [REDACTED]. The Claimant was discharged on March 26, 2008.

On June 20, 2008, the Claimant was evaluated at the [REDACTED] by an internist. The physical examination found the Claimant with full range of motion of his C-spine and forward flexion was 0-50 of the thoracolumbar spine. Extension was 0-10 with bilateral flexion of 0-20. Midline spine tenderness was noted and the Claimant's left hip could not be flexed completely due to the Claimant's swollen knee. The left ankle was swollen laterally and the Claimant's limp was noted as well as the Claimant's need for his cane. The internist opined that the Claimant was hypertensive, had gouting arthritis affecting the left knee and ankle, and had lower back pain.

On August 28, 2008, the Claimant presented to [REDACTED] with complaints of shortness of breath and chest pain. A CT scan revealed a dissecting aorta extending down to the left renal artery. The Claimant was moved to the Intensive Care Unit for severe blood pressure control and further aggressive treatment. Chest x-rays documented cardiomegaly. The Claimant was discharged on September 6, 2008 after being warned that “an increase in blood pressure can worsen the dissection and lead to death, ...” The discharge diagnosis was an aortic aneurysm with secondary diagnoses of acute renal failure, pulmonary collapse, hypertensive chronic kidney disease, chronic kidney disease, hypokalemia, gout disease, COPD exacerbation, cannabis abuse, anemia, thrombocytopenia, and andioneurotic edema.

On September 26, 2008, a Medical Examination Report was completed on behalf of the Claimant. The Claimant was diagnosed with abdominal and back pain, hypertension, and dissecting aorta. The abdominal/thoracic and aorta aneurysm were identified through a CT scan. The Claimant’s condition was listed as stable and he was limited to occasionally lifting less than 10 pounds; stand and/or walk less than 2 hours in an 8-hour workday; and sit less than 6 hours during this same period. The Claimant was determined to be unable to meet his needs in the home, noting that “any strenuous exertions will be disastrous.” The Medical Needs form completed by the same physician documented the Claimant’s need for surgery with an expected lifetime of treatment. The Claimant was found to be unable to work his usual occupation or work at any job.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the Claimant has an

impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted, or expected to last, 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 physical impairments due, in part, to an enlarged heart and hypertension. Appendix I, Listing of Impairments, 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.* 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.

Listing 4.10 discusses aneurysms of the aorta or major branches. Aortic aneurysms due to any cause must be demonstrated by appropriate medically acceptable imaging with dissection not controlled by prescribed treatment. Dissection not controlled by prescribed treatment is when the inner lining of the artery begins to separate from the arterial wall. 4.00H6 The dissection is considered not controlled when an individual has persistent chest pain due to progression of the dissection, an increase in the size of the aneurysm, or compression of one or more branches of the aorta supplying the heart, kidneys, brain or other organs. *Id.* An aneurysm with dissection may cause heart failure, renal (kidney) failure, or other neurological complications. *Id.*

In the record presented, the Claimant was diagnosed, in part, with hypertension, cardiomegaly [enlargement of the heart], aortic aneurysm with continued chest pain and acute renal failure. In addition, the Claimant's treating physician opined that any strenuous exertions "will be disastrous" and medical records documenting that an increase in blood pressure can worsen the dissection and lead to death. The Claimant's need for surgical intervention and a lifetime of treatment is also medically documented. Ultimately, the Claimant's medical records support a finding that the Claimant's physical impairment(s) are "listed impairments" or equivalent to a listed impairment within 4.00, specifically, 4.10. Accordingly, the Claimant is found disabled at Step 3 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. PEM 261, p. 1 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. PEM 261, pp 1 – 2

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

Accordingly, it is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the October 2, 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 accordance with department policy in June 2010.

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

Date Signed: 05/05/09

Date Mailed: 05/05/09

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 receipt date of the rehearing decision.

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