

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.: 2009-21900
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 8, 2009
Wayne County DHS (82)

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 Redford, Michigan on July 8, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P retroactive for August 2008 on November 6, 2008. (Exhibit 1, p. 9)
2. On December 23, 2008, another MA-P application was submitted.

3. On January 7, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant capable of performing other work. (Exhibit 1, pp. 7, 8)
4. On January 27, 2009, the MRT found the Claimant disabled retroactive from September 2008 based upon the December 23rd application. (Exhibit 4)
5. On March 30, 2009, the Department received the Claimant’s Request for Hearing protesting the denial of benefits. (Exhibit 48)
6. On May 26, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
7. The Claimant’s alleged disabling impairments are due to back and shoulder pain and coronary artery disease.
8. At the time of hearing, the Claimant was 52 years old with a [REDACTED] birth date; was 5’ 6” in height; and weighed 196 pounds.
9. The Claimant has a limited education and an employment history as a laborer in the construction industry.
10. The Claimant’s impairment(s) have lasted, or are expected to last, for a continuous 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) 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) 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 approximately June 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 non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability on the basis of a back and shoulder pain, and coronary artery disease. On [REDACTED], the Claimant presented to the emergency room with complaints of chest pain radiating to his jaw and arm. The Claimant underwent an emergent cardiac catheterization for a non-ST elevation myocardial infarction. The ejection fraction was estimated at 45%. On [REDACTED], the Claimant was discharged with the diagnoses of a myocardial infarction status post angioplasty and stent to the circumflex artery and hyperlipidemia. Surgical intervention to the left anterior descending and right coronary artery was planned.

On [REDACTED], the Claimant was hospitalized for a coronary artery bypass grafting times four. The Claimant tolerated the procedure well and was discharged on [REDACTED].

On [REDACTED], a Medical Examination Report was completed by the Claimant's Cardiovascular-Thoracic Surgeon. The current diagnosis was listed as coronary artery disease. The physical examination revealed that the Claimant required assistance in activities of daily living and for taking pain medication. The sternum was stable with no signs of infection. The Claimant was restricted to occasionally lifting/carrying under 10 pounds and unable to push/pull or perform fine manipulation with his hands/arms. The Claimant was unable to operate foot/leg controls.

On [REDACTED], the Claimant attended a follow-up appointment. The physical examination was unremarkable (in light of the recent surgery). The Claimant was diagnosed

with coronary atherosclerotic disease, post myocardial infarction, status post coronary artery bypass graft x4; failed percutaneous transluminal coronary angioplasty to the circumflex coronary artery; obesity; chest discomfort; dyslipidemia; and chronic obstructive pulmonary disease. The Claimant was given weight and activity restrictions.

On [REDACTED], the Claimant began therapy. The [REDACTED] a progress summary documented the Claimant's limited range of motion in his back and shoulders, along with associated pain. The Claimant was found unable to stand for more than 10 minutes; ambulate for 5 minutes; with difficulty pushing/pulling and performing activities of daily living. No significant improvement was made and a decision to discontinue therapy until the Claimant returned to his physician was made.

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 continuously for twelve months, therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

The Claimant asserts impairment based in part, due to back and shoulder pain. 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. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary,

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

In this case, in June of 2009, medical records document the Claimant's limited range of motion and pain relating to the Claimant's shoulder and back. No further evidence was submitted thus there was insufficient evidence to meet the intent and severity requirement of a listed impairment within 1.00 thus the Claimant cannot be found disabled, or not disabled, under this listing.

The Claimant also claims disability due to coronary artery disease. 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.

In the record presented, the Claimant was diagnosed with coronary artery disease which, after stenting was unsuccessful, required quadruple bypass surgery. In response to a December 2008 application, the MRT found the Claimant met a listed impairment retroactive from September 2008. The only month at issue is August 2008. Ultimately, in consideration of the objective medical documentation, it is found that the Claimant's impairment(s) meets, or is the equivalent thereof, a listed impairment for the month of August 2008. The Claimant's impairment(s) has lasted, and is expected to last, continuously for a period of 12 months or longer. Accordingly, the Claimant is found disabled at Step 3 for MA-P purposes with no further analysis required.

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.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the November 6, 2008 application which included Retro MA-P for August 2008 to determine if all other non-medical criteria are met and inform the Claimant and his 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 department policy in July 2010.

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

Date Signed: 07/14/09

Date Mailed: 07/14/09

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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