

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: 2009-26141
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted on September 9, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on May 7, 2009. The undersigned Administrative Law Judge has written this hearing decision after review of evidence in the record. At the hearing, the Claimant was present and testified. Betty McBride, MCW 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. Claimant applied for SDA and MA as of February 5, 2009.
2. Claimant is 6'3" tall and weighs 320 pounds.

3. Claimant is right handed.
4. Claimant is 32 years of age.
5. Claimant's impairments have been medically diagnosed as hypertension, sleep apnea, obesity, history of clots on lung, anxiety, cardiomyopathy with ejection fraction of 30%, pulmonary embolism, depressive disorder and generalized anxiety disorder.
6. Claimant's physical symptoms are shortness of breath, passing out (6 times in past 6 months), fatigue, and disturbed sleep (choked sensation and rapid heartbeat, maybe 4 hours of sleep).
7. Claimant's mental symptoms are Memory issues, Anxiety attacks (can't breathe and feels cluttered in), Crying spells (3-4x/month), Sleep disturbances, and Fatigue.
8. Claimant testified that he was hospitalized at [REDACTED] in [REDACTED] on [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
9. Claimant takes the following prescriptions (side effects):
 - a) Warfarin – blood thinner
 - b) Furosemide –
 - c) Simvastatin
 - d) Metoprolol
 - e) Lisinopril
 - f) Lovex
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a 11th grade education and a GED.
12. Claimant is able to read/write/perform basic math skills.
13. Claimant last worked at [REDACTED] in [REDACTED] of 2009 as a hi-lo driver and salesperson. Physical activity involved being on his feet all day, lifting up to 60 lbs. and bending and stooping. Claimant fell down at work a couple times and was taken off work by his treating physicians.
14. Claimant has prior employment experience at [REDACTED] as a salesperson for electrical appliances (required standing on his feet, minimal lifting up to 10lbs, bending & stooping); [REDACTED] in meat department (lifting frozen meat 10 lbs); [REDACTED] stocking (lifting up to 50 lbs, bending/stooping); and maintenance at a homeless shelter (take garbage out, sweeping, mopping, keeping building tidy).

15. Claimant testified to the following limitations:
 - Sitting: Legs get numb and swell up if sit/stand too long.
 - Standing: Cannot stand for long periods of time
 - Walking: 1 block
 - Bend/stoop: Depends on how legs are. If swollen, CI cannot bend or stoop at all.
 - Lifting: No lifting over 5 lbs.
 - Grip/grasp: no problems
16. Claimant performs household chores such as dusting, grocery shopping if it is a short trip, taking out the trash, making the bed, clearing dishes from the table, and washing dishes.
17. Claimant testified that he sometimes uses a cane when legs are swollen.
18. The Department denied benefits effective 4/29/09.
19. Medical records were reviewed as follows, in part:

██████████ Hospital Admission (Exhibit 2, pp. 64-65)

DISCHARGE DX: Pulmonary embolism, dilated cardiomyopathy with ejection fraction of 30%, obstructive sleep apnea, hypertension, and hyperlipidemia.

CASE SUMMARY: Pt presented with acute chest pain and accelerated hypertension. Pt started on anticoagulation.

██████████ hospital admission and ECHO 2D

Left atrial diameter is mildly increased. The left ventricle shows borderline hypertrophy with mild enlargement and severe decrease in left ventricular contractile function. Estimated visual ejection fraction is about 30%. Appears to be clot in left pulmonary artery
IMPRESSIONS: Acute pulmonary embolus

██████████ Internal Medicine Medical Examination Report (Exhibit 1, pp. 26-27)

COMPLAINTS: Shortness of breath

DX: Pulmonary embolism, hypertension, hyperlipidema

PHYSICAL LIMITATIONS: Lifting up to 20 lbs occasionally, Stand/walk at least 2 hours in a 8 hour work day, Sit less than 6 hours in 8 hour work day

RECOMMENDATION: Cardiac catheterization, possible implantable cardioverter defibrillator

██████████ Psychiatric Report (Exhibit 1, p. 5)

Complaints: sweating, increased heart rate, choking, fearful of going to sleep and feeling scared b/c of physical condition, crying

spells, difficulty sleeping, anxiety, anger and depression, difficulty sleeping, weight gain and poor appetite, memory problems.

MEDICAL SOURCE STATEMENT: Based on today's evaluation, it appears the patient suffers from medical conditions having obesity, hypertension, sleep apnea, also to rule out cardiac condition. He has a history of blood clots in the lungs. He also has periods of anxiety in which he describes his symptoms as sweating, increased heart rate, fear of sleeping, feeling scared of his physical problems and choking sensations. He also indicated that he gets angry and depressed and feels useless. In regard to his sensorium and mental capacity he did have some minor problems with immediate and recent memory and also with information.

DX: Depressive disorder due to general medical condition, generalized anxiety disorder

GAF = 50

PROGNOSIS: Fair. He needs support services.

██████████ Hospital Admission (Exhibit 2, pp. 100-106

Received pt from ER with dx of tachyarrthmia

██████████ – Hospital discharge (Exhibit 2, p. 56)

Heart catheterization

██████████ Hospital Admission (Exhibit 2, pp. 89-90)

Admitted to hospital due to left sided chest pain.

DX: Atypical chest pain, ischemic cardiomyopathy, hypertension, morbid obesity, recent history of pulmonary embolism.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *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).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant last worked in

██████ of 2009. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of hypertension, sleep apnea, obesity, cardiomyopathy with ejection fraction of 30%, pulmonary embolism, depressive disorder and generalized anxiety disorder. The medical evidence has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities as shown by doctors' reports and physician imposed restrictions. Claimant's impairments are expected to last continuously for more than twelve months. Therefore, Claimant meets the burden of the second step.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical records support a finding that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a)(4)(iii). After reviewing the criteria of listing 4.02 *Chronic Heart Failure*, the undersigned finds the Claimant's medical records substantiate that the Claimant's impairments meets or is medically equivalent to the listing requirements.

In 20 CFR 404, Appendix 1 to Subpart P, Listing 4.02 *Chronic Heart Failure* is described as follows:

Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in both A and B are satisfied.

- A. Medically documented presence of one of the following:
 - 1. Systolic failure 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 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

AND

- B. Resulting in one of the following:

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12 month period with evidence of fluid retention 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.

20 CFR 404, Subpart P, Appendix 1, Rule 4.02.

Claimant was admitted to the hospital in [REDACTED] of 2009 and test results showed an ejection fraction of 30%. Furthermore, Claimant was admitted to the hospital three times in the past 12 months for a period of cardio complaints requiring admission for more than 12 hours. Accordingly Claimant's medical impairment satisfies, or is equivalent to the criteria set out in the above listing.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's medical impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the

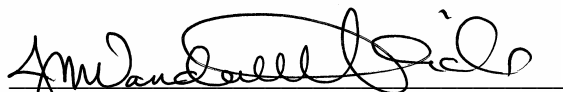
Program Reference Manual (PRM). A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of February 5, 2009 including any retroactive benefits for which Claimant applied.

Therefore, the department is ordered to initiate a review of the application of February 5, 2009, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in December, 2010.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 02/02/10

Date Mailed: 02/03/10

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 Circuit Court within 30 days of the mailing 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.

JV/dj

cc:

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