

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.: 2009-26577
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 3, 2009
Wayne County DHS (73)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

HEARING DECISION

This matter was conducted on April 6, 2009, pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on May 8, 2009. At the hearing, the Claimant was present and testified. [REDACTED] was present and represented Claimant. [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) Claimant filed for Medical Assistance ("MA") on 8/26/08. Claimant applied for retroactive benefits through August of 2008.

- 2) Claimant's impairments have been medically diagnosed as constrictive pericarditis with pericardiectomy in [REDACTED] and hypertension.
- 3) Claimant's physical symptoms include dizziness, weakness, lack of energy, decreased sex drive, shortness of breath, and stiffness at site of the surgical incision.
- 4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
- 5) Claimant is 6'2-1/2" tall and weighs 255 pounds.
- 6) Claimant is 46 years of age.
- 7) Claimant has a high-school education along with some college.
- 8) Claimant is able to read and write and perform basic math skills.
- 9) Claimant last worked in May of 2007 doing factory work painting car parts on an assembly line.
- 10) Claimant has prior employment experience as a records clerk at a bank and as a security guard.
- 11) Claimant testified to the following physical limitations:
 - a. No lifting over 50 lbs.
 - b. No running
 - c. Moderate activity
- 12) Claimant testified that he performs household activities such yard work with breaks and laundry.
- 13) The Department found that Claimant was not disabled and denied Claimant's Medicaid application on April 6, 2009.

14) Medical records examined are as follows:

██████████ Internist IME Medical Examination Report (Exhibit 3, pp. 1-2)

HX: dyspnea, hypertension, chest pain

ABDOMINAL: Keloid chest wall incision, tenderness

PHYSICAL LIMITATIONS: Lifting 20 lbs occasionally, stand/walk less than 2 hrs in 8 hour day, sit less than 6 hours in 8 hour day

WORK: I have no medical documentation regarding past history of working for his cardio status and therefore cannot recommend full return to work with no restrictions.

██████████ Internist IME Report (Exhibit 3, pp. 3-7)

COMPLAINTS: weakness, lack of energy, decreased sex drive, shortness of breath when he walks one half a block or goes up 10 stairs, chest pain 3-4 times per week that last 20 minutes.

ASSESSMENT: The patient has a history of hypertension. He has two elevated readings and one normal today. His chest pain is of unclear etiology, whether it is chest wall pain or cardiac. He needs further evaluation for a clear to return to work. He has dyspnea on exertion, possibly cardiac in origin. He needs further evaluation before he is cleared to return to work.

██████████ Cardiac Cath Lab Report (Exhibit A7)

ANGIOGRAPHIC FINDINGS:

- a) The left main coronary artery was normal.
- b) The left anterior descending artery had a 40% mid stenosis, otherwise with luminal irregularities
- c) The circumflex had luminal irregularities
- d) The right coronary artery had 30% proximal lesion

IMPRESSION:

1. Nonobstructive coronary artery disease
2. Hemodynamic measurements consistent with constrictive pericarditis.

██████████ Hospital Admission (Exhibit 1, pp. 16-17, Exhibit A10-17)

Pt admitted for constrictive pericarditis and thickening of the pericardium, has a pericardiectomy ██████████, was transferred to 9-ICU, extubated on ██████████ and then transferred to 8-IMCU on ██████████. Chest tube removed ██████████. Pleural chest tube split on ██████████, right pleural tube pulled ██████████ and left pleural tube pulled on ██████████. Pt was discharged home with home health care.

██████████ Chest X-ray (Exhibit A1)

IMPRESSION: Residual CHF and bibasilar airspace disease

██████████ Surgical Report (Exhibit A3-4)

DX: Chronic constrictive pericarditis

PROCEDURE PERFORMED: Median sternotomy, pericardiectomy, drainage of right-sided pleural effusion

██████████ Cardiac Consultation (Exhibit A18)

HX: May hospital admission with pericardiocentesis. Echocardiogram showed significant pericardial thickening and well as very engorged inferior vena cava. CT scan of chest, abdomen and pelvis show shrinking of the liver consistent with hepatic cirrhosis. Also showed significant pericardial thickening and evidence of some pleural effusions. Pt has now been referred for pericardiectomy.

SYMPTOMS: shortness of breath, and dyspnea on exertion.

RECOMMENDATION: Pericardiectomy.

████████████████████ – Hospital Admission

Admitted for evaluation of increased abdominal girth and lower extremity swelling and found to have a large pericardial effusion for which he went pericardiocentesis.

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 he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, he is not disabled regardless of how severe his/her physical and mental impairments are and regardless of his 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 2008. 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).

An impairment must last, or be expected to last, for a continuous period of at least 12 months. 20 CFR 416.909.

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 showing a history of chronic constrictive pericarditis and thickening of the pericardium. Claimant had a pericardiectomy with drainage of the right-sided pleural effusion on [REDACTED]. Claimant continues to suffer from hypertension and is restricted to lifting 20 lbs occasionally, standing/walking less than 2 hours in an 8-hour day and sitting less than 6 hours in an 8-hour day. Claimant’s impairment has or is expected to last more than twelve months. Therefore, the medical evidence has established that

Claimant has a physical impairment that has more than a minimal effect on basic work activities. It is necessary to continue to evaluate the Claimant's impairments under Step 3.

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 record will not support findings 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). According to the medical evidence alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to a finding of a listed impairment. The listings contained in 4.01 *Cardiovascular System* were reviewed. In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what you can do in a work setting. RFC is the most you can still do despite your

limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Claimant has presented medical evidence showing that he suffers from hypertension and chronic constrictive pericarditis resulting in a pericardiectomy. As a result, the independent medical examiner indicated that she could not return the claimant to work without restrictions. Those restrictions are no lifting over 20 lbs occasionally and no sitting for more than 6 hours in an 8-hour day or standing for over 2 hours in an 8-hour day.

Claimant's prior employment included factory work (sedentary and up exertional level), a records clerk (sedentary exertional level) and a security guard (light exertional level). The undersigned finds the Claimant able to return to a sedentary work. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a) describes sedentary work:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

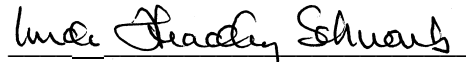
Based on this information, the undersigned finds the Claimant able to return to past relevant work as a records clerk or any other sedentary position that allows him a sit/stand option. This is also supported by Claimant's testimony that he is able to walk 30-40 minutes at a time and mow the grass with breaks. As Claimant's impairments do not prevent him from performing past relevant work, Claimant is considered not disabled under the fourth step.

It is the finding of the undersigned, based upon the medical data and hearing record, that Claimant is "not disabled" at the fourth step. There is insufficient evidence to support a finding

that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is not "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, finds that the Department was correct in determining that the claimant was not disabled for purposes of the MA program and IT IS ORDERED that the Department's decision in this matter is affirmed.


Linda Steadley Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 2, 2010

Date Mailed: March 9, 2010

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.

LSS/pf

cc:

