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.: 2010-12400
Issue No.: 2009
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
February 4, 2010
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 Thursday, February 4, 2010. The Claimant appeared, along with [redacted] 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-P") benefit 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 benefits on June 29, 2009.

2. On August 18, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled. (Exhibit 1, pp. 1, 2)

3. The Department sent an eligibility notice to the Claimant informing her that she had been foun not disabled for purposes of the MA-P program.

4. On November 17, 2009, the Department received the Claimant's Request for Hearing protesting the disability determination. (Exhibit 2)

5. On December 30, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)

6. The Claimant's alleged physical disabling impairments are due to chronic back pain, radiculopathy, fibromyalgia, congestive heart failure, diabetes mellitus and neuropathy, hypertension, renal insufficiency, and obesity.

7. The Claimant's alleged mental disabling impairment(s) are due to depression.

8. At the time of hearing, the Claimant was 53 years old with a [redacted] birth date; was 5' 4" in height; and weighed 270 pounds.

9. The Claimant has a limited education and has no employment history over the last 15 years.

10. The Claimant's impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

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"), formerly 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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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 416.927

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 applicants 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. 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 based on chronic back pain, radiculopathy, fibromyalgia, congestive heart failure, diabetes mellitus and neuropathy, hypertension, renal insufficiency, obesity, and depression.

On [redacted], the Claimant presented to the hospital with complaints of chest pain. The Claimant's history of diabetes mellitus, hypertension, chronic low back pain with radiculopathy in both legs, neuropathy in both legs, and fibromyalgia was documented as well as the Claimant's medication non-compliance due to financial constraints. On [redacted], an echocardiogram was performed which found stage II diastolic dysfunction with high atrial pressures, mild aortic stenosis, trace aotric regurgitation, trace mitral regurgitation, trace tricuspid regurgitation, ejection fraction between 55-60%, and pulmonary artery systolic pressure at the upper limits of normal. The discharge summary was not submitted so it is not clear what the final diagnoses were or the date of discharged however, the consultative examinations focused on the Claimant's chest pain, hypertension, diabetes mellitus, and obesity.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were lumbar radiculpathy post laminectomy syndrome lumbar spine and diabetic peripheral neuropathy. The Claimant was limtied to occasionally lift/carry

less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday with sitting less than 6 hours during this same time frame. The Claimant was found unable to perform repetitive actions with the exception of find manipulation

On [redacted], the Claimant's blood work revealed high glucose and low hemoglobin and hematocrit.

On [redacted], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were congestive heart failure, diabetes mellitus, diabetic neuropathy, chronic radiculopathy, chronic back pain, depresion, morbid obesity, hyptertension, and renal insufficiency. The Claimant's condition was deteriorating and she was limited to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours in an 8-hour workday; and unable to perform repetetive action with any extremity with the exception of simple grasping. The Claimant's current medication regime consists of 12 medications to include neurontin and morphine. The Claimant required a cane to ambulate and she was limited in her ability to sustain concentration.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant by the Claimant's treating pain management physician. The current diagnoses were lumbar radiculopathy and diabetic peripheral neuropathy. The physical examination revealed a slow gait with a limited range of motion and generalized weakness in both lower extremities. The straight leg raising was positive bilaterally. A prior nerve conduction study was abnormal with evidence of perifpheral neuropathy. The Claimant was limtied to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday with sitting less than 6 hours during this same time frame. The Claimant was found unable to perform repetitive actions with the exception of fine manipulation.

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 she does have physical limitations on her 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.

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 asserts disabling impairments due to chronic back pain, radiculopathy, fibromyalgia, congestive heart failure, diabetes mellitus and neuropathy, hypertension, renal insufficiency, and obesity

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.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis,

> degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:
>
> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
>
> B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
>
> C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

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 on the individual's other body systems are 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 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

> A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
>
> B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or $pC0_2$ or bicarbonate levels); or
>
> C. *Retinitis proliferans;* evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

On August 24, 1999, the Social Security Administration deleted Listing 9.09 regarding obesity from the Listing of Impairments. SSR 02-1p In conjunction, the final rule in the Federal Register deleting 9.09, added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings that provide guidance regarding the potential effects obesity has in causing or contributing to impairments in those body systems. *Id.* Obesity affects the

cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems. *Id.* Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments (and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity) any additional and cumulative effects of obesity is considered. *Id.* The National Institute of Health (NIH) established medical criteria for the diagnosis of obesity in its *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults* (NIH Publication No. 98-4083, September 1998). SSR 02-1p These guidelines classify overweight and obesity in adults according to Body Mass Index ("BMI") which is the ratio of an individual's weight in kilograms to the square of his/her height in meters. *Id.* For adults, the *Clinical Guidelines* describe a BMI of 25-29.9 as "overweight" with obesity being 30.0 or above. *Id.* The guidelines recognize three levels of obesity. Level I includes BMIs of 30.0-34.9; Level 2 includes BMIs of 35.0-39.9; and Level 3 (termed "extreme" obesity) includes BMIs of 40.0 or above. *Id.*

In this case, the objective evidence establish the Claimant's impairments of diabetes mellitus, hypertension, radiculopathy, neuropathy, fibromyalgia, stage II diastolic dysfunction, back pain, congestive heart failure, and renal insufficiency. The Claimant's BMI is 46.3 (based on the Claimant's 5'4" height and weight of 270 pounds) which is considered extreme obesity. The Claimant's weight negatively impacts the Claimant's cardiovascular and musculoskeletal impairments. The Claimant's treating physician opined that the Claimant's condition was deteriorating limiting her to less than sedentary activity (which based on the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II, specifically 201.09] would warrant a finding of disabled). Ultimately, the combination of the Claimant's medical conditions as detailed above

and in consideration of the Claimant's BMI, meet, or are the equivalent thereof, a listed impairment, specifically, 9.08A. Accordingly, the Claimant is found disabled at Step 3 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 June 29, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her representative of the determination in accordance with department policy.

3. The Department shall supplement for any lost benefits the Claimant 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 April 2011.

Colleen M. Mamelka

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

Date Signed: __3/02/2010____

Date Mailed: __3/02/2010____

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 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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