

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-29744
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 24, 2010
DHS County: Wayne (82-82)

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 Monday, May 24, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time frame for the issuance of this decision in order to allow for the submission of additional medical evidence. The records were received, reviewed, and entered as Exhibits 4 – 7. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on October 14, 2009.

2. On October 29, 2009, the Medical Review Team (“MRT”) approved the Claimant for SDA benefits but found the Claimant not disabled for purposes of MA-P coverage. (Exhibit 1, pp. 39, 40)
3. The Claimant did not appeal this determination.
4. On December 7, 2009, the Claimant submitted his SDA re-determination packet seeking SDA and MA-P benefits.
5. On December 28, 2009, the Medical Review Team (“MRT”) found the Claimant not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, pp. 1, 2)
6. On January 6, 2010, the Department sent an Eligibility Notice to the Claimant informing him of the MRT determination.
7. On March 30, 2010, the Department received the Claimant’s timely written request for hearing. (Exhibit 2)
8. On April 16, 2010, the State Hearing Review Team (“SHRT”) approved the Claimant for SDA benefits effective December 2009 but found the Claimant not disabled for purposes of MA-P coverage. (Exhibit 3)
9. On April 27, 2010, a Summary Order for Partial Disposition was entered ordering the Department to determine SDA eligibility.
10. The Claimant alleged physical disabling impairments are due to a myocardial infarction, tracheotomy, paralyzed vocal cords, left ear deafness, and shortness of breath.
11. The Claimant has not alleged any mental disabling impairment(s).
12. At the time of hearing, the Claimant was 43 years old with a [REDACTED], birth date; was 6’ in height; and weighed 220 pounds.
13. The Claimant is a high school graduate with some college and an employment history working as a wig maker and high school football coach.

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, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Manual (“BRM”).

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 416.927.

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 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 (e.g., 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 to 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 3 to Step 4. 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 4 and 5. 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). Additionally, 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 is, therefore, not ineligible for 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 due to myocardial infarction, tracheotomy, paralyzed vocal cords, left ear deafness, and shortness of breath.

On [REDACTED], the Claimant presented to the hospital with complaints of chest tightness. The Claimant had emergent stenting and angioplasty without complication but subsequently went into cardiac shock and cardiac arrest. The Claimant was intubated and monitored in the Intensive Care Unit. Subsequently, the Claimant was extubated but had complaints of left ear hearing loss. The Claimant was discharged on [REDACTED] with the diagnoses of ST-elevated myocardial infarction, coronary artery disease with percutaneous intervention and stent to the circumflex and obtuse marginal, status post cardiac arrest, resolving ventilator-acquired pneumonia with methicillin-resistant *Staphylococcus aureus*, hypertension, preserved left ventricular function (ejection fraction 65%), anemia, increased liver function tests, dysphagia (resolved), and debility.

On [REDACTED], the Claimant presented to the hospital with increasing shortness of breath. The Claimant was discharged on [REDACTED] with the diagnoses of shortness of breath likely related to uncontrolled hypertension (improved control at discharge), coronary artery disease, dyslipidemia, and peripheral neuropathy.

On [REDACTED], the Claimant presented to the hospital with a cough. The Claimant was discharged on [REDACTED], with the diagnoses of tracheal stenosis, left true vocal cord paralysis/paresis likely due to an episode of self-extubation in recent past, subglottic stenosis, hypertension, and history of non-ST elevation myocardial infarction status post stent.

On [REDACTED], the Claimant presented to the hospital with breathing difficulties. The Claimant's history of coronary artery disease, ST elevation myocardial infarction status post stenting, and subglottic stenosis as a result of prolonged intubation were noted. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of subglottic tracheal stenosis, coronary artery disease, and hypertension (controlled).

On [REDACTED], the Claimant presented to the hospital with complaints of dyspnea and cough. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of subglottic stenosis, pneumonia, hypertension, and history of coronary artery disease.

On [REDACTED], the Claimant attended a consultative evaluation. The diagnoses were status post tracheotomy, hypertension, history of coronary artery disease with angioplasty in the past, hypertensive cardiovascular disease, and pulmonary insufficiency. The Medical Examination Report was somewhat contradictory in that the Claimant's condition was listed as both stable and deteriorating. The Claimant was found able to frequently lift/carry 20 pounds; stand and or walk up to 6 hours in an 8-hour workday; sit about 6 hours during this same time frame; and able to perform repetitive actions with his extremities with the exception of pushing and/or pulling with his upper extremities. The Pulmonary Function Study Test noted the Claimant had a very severe obstruction; however, the results were not reliable due to the Claimant's tracheotomy.

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 some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that 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 has alleged physical disabling impairments due to myocardial infarction, tracheotomy, paralyzed vocal cords, left ear deafness, and shortness of breath.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), and Listing 4.00 (cardiovascular system) were considered in light of the objective medical evidence. Ultimately, based on the medical evidence alone, the Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment. Accordingly, the Claimant cannot be found disabled or not

disabled at Step 3 and, thus, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's employment consists of work as a wig maker and high school football coach. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's work as a wig maker is classified as semi-skilled sedentary work while his coaching job is considered semi-skilled light/medium work.

The Claimant testified that he can walk approximately 2 blocks; sit for less than ½ hour; lift/carry little weight; stand less than 2 hours; and is able to bend and/or squat. The Medical Examination Report from the consultative evaluation found the Claimant in both stable and deteriorating condition and able to frequently lift/carry 20 pounds; stand and/or walk up to 6 hours during an 8-hour workday; sit about 6 hours during this same time frame; and able to perform repetitive action with his extremities with the exception of pushing/pulling with his upper extremities. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is able to return to past relevant work as a wig maker; therefore, he is found not disabled at the fourth step with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the

SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes 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 automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, the Claimant is found not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department’s determination is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 22, 2011

Date Mailed: March 24, 2011

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.

2010-29744/CMM

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.

CMM/pf

cc:

