

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

IN THE MATTER:

[REDACTED]

Reg. No.: 2010-41946
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 9, 2010
Oakland County DHS (02)

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 Madison Heights, Michigan on Monday, August 9, 2010. The Claimant appeared and testified, along with [REDACTED]. 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 upon 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 April 19, 2010.
2. On May 5, 2010, the Medical Review Team ("MRT") determined the Claimant was not disabled. (Exhibit 1, pp. 1, 2)
3. On May 11, 2010, the Department sent a Notice of Case Action to the Claimant informing him that he was found not disabled.

4. On or about July 1, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On July 14, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)
6. The Claimant's alleged physical disabling impairments are due to congestive heart failure, pulmonary embolism, and hypothyroidism.
7. The Claimant has not alleged mental disabling impairment(s).
8. At the time of hearing, the Claimant was 43 years old with a [REDACTED] birth date; was 5' 8" in height; and weighed 230 pounds.
9. The Claimant is a high school graduate with an employment history as a used car salesman. (Exhibit 1, p. 4)
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 the 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 (formerly known as the Family Independence Agency) administers the MA program 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 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) 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)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability 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 based on congestive heart failure, hypothyroidism, and blood clots. In support of his claim, some older medical records from as early as 2001 were submitted which document treatment/diagnoses for chest pain, atrial fibrillation, pulmonary embolism, thrombocytopenia, chronic obstructive pulmonary disease, emphysema, splenomegaly, enlarged lymph nodes, hyperthyroidism, ejection fraction of 66% (2004) and 40 to 45% (2008), and hemoptysis.

On [REDACTED], the Claimant was admitted to the hospital with lower extremity edema, breathing difficulty, and orthopnea. The ejection fraction was 15%. The

Claimant was discharged on [REDACTED] with the diagnoses of Grave's disease, atrial fibrillation, congestive heart failure, cardiomyopathy, and pneumonia.

On [REDACTED], the Claimant attended a follow-up appointment. The EKG showed atrial fibrillation with controlled ventricular response. The Claimant was diagnosed with severe cardiomyopathy, congestive heart failure, and atrial fibrillation. The Claimant's ejection fraction was less than 35% noting his need for a defibrillator.

On [REDACTED], an Echocardiogram/Doppler Report revealed severe right and left atrial enlargement; mild to moderate left ventricular enlargement with a diastolic dimension of 67 and a systolic dimension of 57 mm; severe global hypokinesia with a visual assessment ejection fraction of barely 25 to 30 percent; mild aortic root sclerosis; moderate mitral regurgitant flows; mild pulmonary regurgitant flow; and mild tricuspid regurgitant flow.

On [REDACTED], the Claimant's cardiologist completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were severe cardiomyopathy, congestive heart failure, and atrial fibrillation. The physical examination revealed fatigue, shortness of breath (due to reduced ejection fraction), and ejection fraction of 25 to 30% noting a history of congestive heart failure. The Claimant was found able to occasionally lift/carry 25 pounds; stand and/or walk about 2 hours in a 6 hour workday; sit about 6 hours during an 8 hour workday; and able to perform repetitive actions with his extremities with the exception of pushing/pulling.

On [REDACTED], the Claimant attended a follow-up appointment with a cardiologist regarding his history of non-ischemic dilated cardiomyopathy and chronic persistent atrial fibrillation. The purpose of the visit was for possible ICD and management of atrial fibrillation. While hospitalized, the Claimant's ejection fraction was determined to be about 15 percent. An echocardiogram in June revealed an ejection fraction of 25 to 30 percent. The physical examination found the Claimant ventricular rates uncontrolled on a paroxysmal basis. The Claimant qualified for ICD on a prophylactic basis.

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 medical evidence establishing that he does have some physical impairment that effect 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 congestive heart failure, pulmonary embolism, and hypothyroidism.

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.

In this case, the Claimant's history of congestive heart failure is well documented as well as his continued decreased ejection fraction. Currently, the ejection fraction is

“barely 25-30%.” As a result of the persistent symptoms of heart failure, the Claimant is very seriously limited in his abilities to independently initiate, sustain, or complete activities of daily living. Based on the foregoing, it is found that the Claimant’s impairment(s) meets, or the medical equivalent thereof, a Listed impairment within Listing 4.00, specifically, 4.02. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the April 19, 2010 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination.
3. The Department shall supplement for any lost lost benefits that 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 with department policy in September 2011.

Colleen M. Mamelka

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

Date Signed: 8/10/2010

Date Mailed: 8/10/2010

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

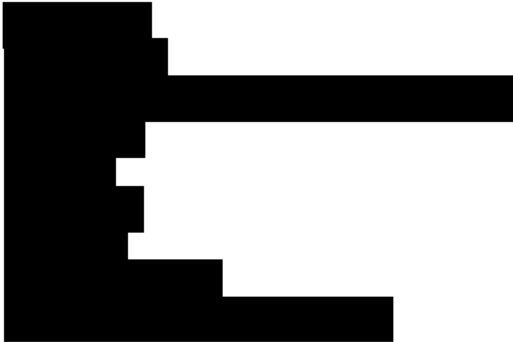
2010-41946/CMM

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.

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