

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.: 2010-7359
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 4, 2010
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

HEARING DECISION

This matter was conducted by Administrative Law Judge Linda Steadley Schwarb on January 4, 2010, pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on September 18, 2009. At the hearing, the Claimant was present and was represented by his [REDACTED]. [REDACTED], 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") and State Disability Assistance ("SDA") programs.

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 on 6/23/09. Claimant requested MA retroactive to April, 2009.

- 2) Claimant is 5'5 ½" tall and weighs 232 lbs.
- 3) Claimant is right handed.
- 4) Claimant is 45 years of age.
- 5) Claimant's impairments have been medically diagnosed as congestive heart failure, severe restrictive lung disease, severe obstructive sleep apnea, cardiomyopathy and obesity.
- 6) Claimant's physical symptoms are shortness of breath, coughing, shaking, fatigue, chest pain, difficulty breathing while lying flat, sleep disturbances, passing out once every 5-6 weeks, leg pain, and right side pain.
- 7) Claimant's wife testified that Claimant is depressed and is taking anti depressants. Claimant also testified to short-term memory loss.
- 8) Claimant testified that he uses supplemental oxygen 24 hours per day, a C-PAP machine at night and a breathing treatment four times per day.
- 9) Claimant testified that he takes prescription medication that makes him dizzy and "out of it", including:
 - a. Ranitidine
 - b. Carvedilol
 - c. Nitroglycerin
 - d. Citalopram
 - e. Benzonatate
 - f. Flovent Inhaler
 - g. Aspirin
 - h. Albuteral Inhaler
 - i. Ipratropium Bromide in Nebulizer (twice a day)
 - j. Percocet – every 6 hours as needed for pain
 - k. Oxygen – 3 liters
 - l. CPAP machine
- 10) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

of functional alveolar capillary surface. Following administration of bronchodilators, there is no significant response. The reduced diffusing capacity indicates a moderate loss of functional alveolar capillary surface.

██████████:

Ejection Fraction 45%, Abnormal echocardiogram, abnormal nuclear cardiac stress test

RECOMMENDATIONS: Given the patient's risk factors, abnormal echocardiogram and abnormal Cardiolite stress test, I recommend the patient be considered for a diagnostic heart catheterization with possible angioplasty and stenting. The patient has difficulty laying flat due to his persistent cough and shortness of breath, I have requested that this patient have this procedure performed via the radial or brachial approach.

██████████ Hospital Admission (Exhibit 2, p. 117)

Left heart catheterization with coronary cineangiograms

IMPRESSION:

- 1) Mild global cardiomyopathy, EF 50%
- 2) Elevated left ventricular and diastolic pressure 20 mm of mercury
- 3) The patient has a nonischemic cardiomyopathy

██████████ Cardiac Consult (Exhibit 2, p. 165-166)

HX of suicide attempt and depression

Chest pain: Recent stress test was negative however showed changes consistent with mild cardiomyopathy. The question is whether this is ischemic or nonischemic cardiomyopathy since patient has a history of drug abuse including cocaine.

4/09 – 50% EF

██████████ – ██████████ Medical Exam Report (Exhibit 3)

HX: ██████████ hospitalized with respiratory failure, sepsis, coagulopathy, acute renal failure and hemoptysis.

CURRENT DX: Cardiomyopathy, severe obstructive sleep apnea, severe restrictive lung disease, hemoptysis – resolved, respiratory failure – resolved, coagulopathy – resolved.

PHYSICAL LIMITATIONS: Lifting/carrying – none, Cannot perform standing/walking. No grasping, reaching, pushing/pulling or fine manipulating with arms, no foot controls.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

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 CFR 416.905

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 April, 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 F2d 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 medically diagnosed impairments of congestive heart failure, severe restrictive lung disease, severe obstructive sleep apnea, and obesity. Claimant has been placed on physical limitations by his treating physicians in terms of sitting, standing, walking, pushing and pulling. The medical evidence has established that Claimant has a physical impairment that has more than a minimal effect on basic work activities; and Claimant's impairments have lasted or are expected to last continuously for more than twelve months.

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 (Listing), discusses the analysis and criteria necessary to a finding of a listed impairment. The Listings 3.02 *Chronic pulmonary insufficiency*; 3.08 *Mycobacterial, mycotic, and other chronic persistent infections of the lung* and 4.02 *Chronic heart failure* were reviewed. In this matter, Claimant's medical tests do not show an impairment that will meet any of the above mentioned listings.

Given the Claimant's height of 5'5 1/2" and weight of 232 pounds, Claimant is considered obese after determining his BMI (Body Mass Index). Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone. The National Institute of Health Clinical Guidelines for Obesity define three levels of obesity. Level I includes Body Mass Index (BMIs) of 30.0-34.9, Level II includes BMIs of 35.0-39.9 and Level III extreme obesity is considered over 40.0. Obesity at Level III represents a condition which creates the greatest risk for developing obesity-related impairments. The Claimant's obesity as measured by her BMI may be calculated using the Center for Disease Control and Prevention Body Mass Index calculation found at:

http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm.

The formula for calculating BMI is as follows: Calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion factor of 703. This formula as applied to the Claimant's height and weight yields a BMI 38.0, or Level II obesity. This level of obesity impacts the Claimant's pulmonary function.

SSR-02 provides in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

Claimant does not meet a listing; therefore, 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 supporting medical diagnoses of congestive heart failure, severe restrictive lung disease, severe obstructive sleep apnea, cardiomyopathy and obesity. Claimant's prior employment included unskilled jobs such as handyman, construction work, prep cook and general laborer (cleaning drains and sewers) which are all light to medium in exertional level. In addition, Claimant has been placed under physical restrictions by his own doctor as well as an independent medical physician. An Administrative Law Judge must give controlling weight to a medical evaluation by the claimant's treating physician or explain his reasons for such action. *Hensley v. Comm.*, 573 F.3d 263 (6th Cir. 2009). According to the most recent treating physician limitations, Claimant is under significant physical limitations including no lifting, sitting/standing/walking, and no repetitive actions with arms or legs. Given these limitations, it is the finding of the undersigned, based upon the medical data, that Claimant cannot return to his past relevant work. Evaluation will continue at step 5.

5. Ability to Perform Other Work

In the fifth 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 other work. 20 CFR 416.920(f). This determination is based on the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

Felton v. DSS, 161 Mich. App. 690, 696-697, 411 N.W.2d 829 (1987).

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.

The Administrative Law Judge finds that the Claimant's mental and physical impairments and limitations have a major effect upon Claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems must be considered. The combination of Claimant's impairments result in severe impairment which limits Claimant's ability to work. 20 CFR 404.1529.

Claimant at forty-five is considered a *younger individual*; a category of individuals in age group 45-49 when age is a more advantageous factor for making adjustment to other work.

“Nevertheless, a decision of ‘disabled’ may be appropriate for some individuals (for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work.” 20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(h)(3). Considering Claimant’s difficulty breathing on minimal exertion combined with his obesity, constant supplemental oxygen use, pervasive coughing, passing out, and his limited reading and writing abilities, this Administrative Law Judge finds Claimant disabled from performing any sedentary work. 20 CFR 201.19.

Additionally, the Department has failed to provide vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant’s age, education and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant’s limitations. Accordingly, the Administrative Law Judge concludes that Claimant is disabled for the purposes of the MA program.

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

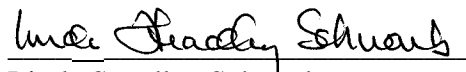
of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

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 and SDA programs as of June 23, 2009, including retroactive benefits to April of 2009.

Therefore, the Department is ordered to initiate a review of the application of June 23, 2009, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform the Claimant and his authorized representative of the determination in writing. The case shall be reviewed in March, 2010.


Linda Steadley Schwarb
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:

