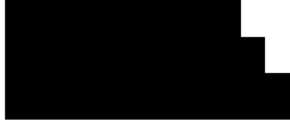


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-9018
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: February 18, 2010
Wayne County DHS (41)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter was heard by Administrative Law Judge (ALJ) Jeannie VanderHeide pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on February 18, 2010. The claimant appeared and testified. ALJ VanderHeide left State of Michigan employment prior to the closure of the record. The undersigned Administrative Law Judge wrote this hearing decision after a review of the evidence in the record including the recording of the actual hearing.

ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. Claimant applied for SDA and MA benefits on August 19, 2009.
2. Claimant applied for SSI/RSDI on an unspecified date in 9/2008.
3. As of 2/18/10, Claimant's SSI/RSDI application has not yet been processed.
4. Claimant is 5'8" tall and weighs 247 pounds.
5. Claimant is right handed.

6. Claimant is 52 years of age (DOB: [REDACTED]).
7. Claimant's impairments have been medically diagnosed as congestive heart failure, depression, alcohol abuse (ejection fraction 25% but not during period of stability) and degenerative findings in right hip.
8. Claimant's physical symptoms include: pain in right hip, sleepless nights and wakes gasping for air, cold sweats, pain in joints (ankles and feet), severe headaches that come and go, blackouts when standing up too fast and shortness of breath.
9. Claimant's mental symptoms are: some short term memory issues, slow concentration, nervousness, anxiety attacks, tightness in chest, fear of dying, weight gain (6 lbs in last month & ½ despite diet, 50 lbs in 6 months), sleep disturbances, fatigue and low self esteem
10. Claimant was previously hospitalized at [REDACTED] Hospital (on [REDACTED]) and [REDACTED] Hospital (on [REDACTED]) where [REDACTED] recommended a pace maker for Claimant.
11. Claimant's current treating physicians are [REDACTED] hospital for refills on prescriptions; Claimant's father pays for Rx refills.
12. Claimant takes the following prescriptions:
 - a) 80 mg Lasix 2x/day
 - b) 25 mg Coreg 2x/day
 - c) 40 mg Lisinopril 1x/day
 - d) Potassium 10 meg slow release 1x/day
 - e) 25 mg Spironolactone
 - f) Baby aspirin
 - g) 2 800 mg Motrin/day
 - h) Tylenol 3 1x/day
13. Claimant's side effects from the medication include an upset and distended stomach. Claimant also feels like his kidneys are tender.
14. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
15. Claimant has 1 ½ years of college credit.
16. Claimant is able to read/write/perform basic math skills.

17. Claimant last worked in [REDACTED] as a waiter. This job required a lot of walking, carrying trays 20-40 lbs. Claimant was let go because he was not keeping up with rest of staff (2 months after Claimant went to hospital initially, 2/08).
18. Claimant has prior employment experience as a telemarketer in [REDACTED]. Claimant was let go due to lack of performance.
19. Claimant's residual function capacity (RFC) includes:
 - Sitting: No problems sitting, but difficult to get up due to hip; (Claimant has to urinate every hour)
 - Standing: 20 minutes
 - Walking: Claimant runs out of breath and is unable to walk a city block without falling over.
 - Bend/stoop: Cannot bend down or stoop (sits on bed to put pants on)
 - Lifting: less than 10 pounds
 - Grip/grasp: Sometimes Claimant drops things; fingers get numb.
20. Claimant lives with his father, but states he is not there very often.
21. Claimant states that he does not drink anymore.
22. Claimant performs some household chores such as vacuuming though he has difficulty. Claimant cooks his food (wide variety of meals), does dishes. Claimant and his father grocery shop together.
23. Claimant lost his license due to prior driving while intoxicated charges
24. Claimant does not use any types of devices to help him walk.
25. Claimant states he used to play golf but no longer does so.
26. Claimant states that he spends his day trying to keep minimal fluids in body and tries not to eat much.
27. DHS found that Claimant was not disabled and denied Claimant's application on 10/7/09.
28. Medical records examined are as follows:

[REDACTED] Mental Status Examination (Exhibit 1, pp. 3-7)

COMPLAINTS: Problems sleeping, with mild insomnia, night sweats and ringing noise in ears, dull pain in left arm, sad and depressed.

DX: Depression, NOS; Alcohol abuse, minimized by patient today

PROGNOSIS: The prognosis is guarded. In light of the history of alcohol abuse, he is not felt capable of managing his own benefit funds.

MEDICAL SOURCE STATEMENT: Based on today's exam, the claimant presented as a man who was able to demonstrate cognitive strengths on Senosium and Mental Capacity portion of the exam, including strengths in immediate and short-term memory as well as the capacity to concentrate as evidence by strengths in calculations. He demonstrated awareness of events in the world, and also some capacity for abstract think. Thus, he appears to have a number of cognitive strengths which should enable him to engage successfully in work-type activities of a moderate degree of complexity, remembering and executing a several step procedure on a sustained basis, insofar as his physical condition allows.

ER Medical Examination (Exhibit 1, pp. 9-17)

COMPLAINTS: Congestive heart failure and pulmonary hypertension, Chronic shortness of breath, dyspnea on exertion with walking less than a block and possibly less than half a block, left arm pain, blackout spells, chronic headaches, day sweats, night sweats and dizziness.

PAST MEDICAL HX: Positive for congestive heart failure, non-ischemic cardiomyopathy, obesity and chronic back pain and right hip pain.

BONES & JOINTS: Straight leg raising while lying 0-50, while sitting 0-90.

MEDICAL SOURCE STATEMENT: Based on today's exam, there needs to be full disclosure of records regarding the extent of his cardiomyopathy as well as his ejection fraction. Again, he continues to have chronic shortness of breath and should avoid heavy lifting, pushing, pulling, walking, standing and exposure to toxins and fumes. He also should avoid prolonged standing, lifting, pushing and pulling because of the limp on the right side and may have degenerative joint disease in that area.

IMPRESSION: The patient has a history of non-ischemic cardiomyopathy and congestive heart failure. The examinee may have pulmonary hypertension.

Cardiologist Medical Exam Report (Exhibit 1, pp. 23-24)

HX: Heart failure diagnosed 9/08. Pt complains of excessive shortness of breath, orthopnea, DND and dizziness. Pt reports on syncopal episode. He reports he can only walk one half city block.

DX: Chronic heart failure – non ischemic dilated

PHYSICAL LIMITATIONS: Unknown

██████████ Cardiologist Letter (Exhibit 1, p. 29)

The pt has requested a letter with regard to his disability. Patient has a history of non-ischemic cardiomyopathy with an EF of 25% or less. Given his cardiac condition, patient cannot do any type of work that involves any lifting of greater than 10 lbs or standing for greater than 30 minutes. This severely limits his employment capabilities. He would therefore be considered as totally disabled.

██████████ Heart Center (Exhibit 1, p. 32)

HX: Patient seen for shortness of breath, orthopnea and PND. Known nonischemic cardiomyopathy. He is under a lot of financial pressure and is very depressed and tearful. He has severe chronic heart failure symptoms as above.

██████████ Heart Center (Exhibit 1, p. 30-31)

Pt has NYHA Class 2 symptoms. Patient was newly found to have congestive heart failure secondary to tobacco and alcohol abuse. He was hospitalized ██████████ and found to have an EF of 25% or less. Cardiac catheterization was negative for coronary artery disease, but he did have mild pulmonary hypertension and modestly elevated right and left sided filling pressures.

██████████ – ██████████ Hospitalization Admission (Exhibit 1, pp. 34-41)

Congestive Heart failure with catheterization

OVERALL IMPRESSION: Dilated left ventricle with severely impaired left ventricular systolic function with an estimated left ventricular ejection fraction at or below 20%, mild pulmonary hypertension with modestly elevated right and left-sided filling pressures.

DISCHARGE: EF at or below 25%.

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 (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 Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

DHS conforms to state statute in administering the SDA program. 2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, DHS uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. The Social Security Administration (SSA) defines disability 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

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or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

The ALJ is responsible for making the determination whether the statutory definition of disability is met. The ALJ is to review all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s) and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b). Claimant was not employed at the time of the hearing so there is no employment to evaluate as SGA. Thus, the process moves on to the second step of the disability determination.

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521;

Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Claimant is diagnosed as having congestive heart failure combined with depression and various physical limits. On 8/24/09, Claimant's treating physician calculated Claimant's ejection fraction at 25%. Based on this and Claimant's medical history, the treating physician considered Claimant's disabilities to limit Claimant from lifting more than 10 pounds or standing longer than 30 minutes. Claimant's physician concluded that these restrictions make Claimant "totally disabled".

The State Hearing Review Team (SHRT) disputed the treating physician's finding. SHRT contends that the ejection fraction was not calculated at a time of stability and should therefore not carry much weight. It should be noted that DHS was given several months to schedule Claimant for additional cardiac testing though none was ever performed. No medical evidence was presented to contradict or lessen the weight of the 8/24/09 ejection fraction calculation. Based on the statement of the diagnosing physician and the ejection fraction calculation, it is found that Claimant's disabilities were severe and that Claimant may be evaluated at the third step of the disability process. It should be noted that had medical evidence been presented to rebut the statement of Claimant's physician, Claimant may not have met the disability requirements of this step.

The third step in the process is to assess whether the impairment or combination of impairments meets a listing as provided by SSA. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled and no further evaluation is needed. If no listed impairment is found, then the disability analysis proceeds to the fourth step.

The listing Claimant could most likely meet would be chronic heart failure. The severity of Claimant's heart failure would satisfy the requirements of disability if medical documents establish:

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.

Claimant's 25% ejection fraction calculated at a time of instability is the only evidence of chronic heart failure. Though the EF percentage meets the chronic heart failure listing of impairment, the calculation may not be considered as Claimant's EF was done at a time of instability. None of any of Claimant's other asserted impairments meet the SSA requirements for a listed impairment. Thus, Claimant has not met a listing of disability and the analysis proceeds to step four.

The fourth step of the process is whether the claimant has the residual functional capacity (RFC) to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). An individual's RFC is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. RFC is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a). In making this finding, the ALJ must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The term "past relevant work" means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant's employment as a waiter would qualify as light work. Claimant's employment as a telemarketer would qualify as sedentary work.

Claimant's RFC is such that he can not be expected to perform the light duties required of a waiter. Claimant's walking and lifting limits fall below those required of a waiter. This is further supported by the outcome of Claimant's most recent employment in which he lost his job due to his inability to perform his duties at an acceptable level.

Claimant's prior employment as a telemarketer would be less physically burdensome, however, Claimant's RFC would again prevent an expectation that Claimant could fulfill those job duties. Claimant had no sitting restrictions but is unable to easily rise due to his degenerative hip issues. Combined with Claimant's restrictions on walking, grasping and bending would make even this employment burdensome for Claimant to perform. It is found that Claimant is unable to perform past relevant work; as such, the disability analysis moves to step five.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine: if the claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon 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 her limitations. 20 CFR 416.966.

Once Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

As stated above, Claimant is not capable of even performing the sedentary work of a telemarketer. There is no alternative employment that Claimant could reasonably be expected to maintain.

Claimant's date of birth is [REDACTED]. Claimant's age is such that Claimant is considered to be closely approaching advanced age. Claimant completed high school with some college credits. Claimant has no direct entry into skilled work. Claimant's work experience as a waiter and telemarketer would be considered unskilled employment.

Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 201.12, as a high school graduate closely approaching advanced age with unskilled work history, Claimant is considered a disabled individual. Accordingly, it is found that Claimant is disabled for purposes of MA and SDA benefits and that DHS erred in denying Claimant's application for SDA and MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application dated 8/19/09 for SDA and MA benefits. It is further found that Claimant is medically disabled for the purposes of SDA and MA benefit eligibility. It is ordered that DHS reinstate Claimant's 8/19/09 application for SDA and MA benefits and process the application in accordance with DHS regulations and the finding that Claimant meets the disability requirement for SDA and MA benefits. The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

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Date Signed: 1/25/2011

Date Mailed: 1/25/2011

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.

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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