

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████
(Deceased)
Claimant

Reg. No.: 2010-2744
Issue No.: 2009
Case No.: ██████████
Load No.: ██████████
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 is deceased. The Claimant's authorized representative, authorized by court appointment as the Special Personal Representative, appeared and testified. ██████████ 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 retroactive for January 2009, on May 14, 2009. (Exhibit 1, pp. 22 – 32)

2. On July 10, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 16, 17)
3. On July 16, 2008, the Department sent the Claimant an eligibility notice informing the Claimant he was found not disabled.
4. On September 8, 2009, the Department received the Claimant’s timely Request for Hearing protesting the denial of benefits. (Exhibit 1, p. 1)
5. On October 28, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. The Claimant passed away on [REDACTED]. (Exhibit 3)
7. The Claimant’s alleged disabling physical impairments were due, in part, to congestive heart failure, diabetes mellitus, hypertension, and obesity.
8. Based on the submitted record, the Claimant’s employment history consists of work as a carpenter.
9. The Claimant’s impairment(s) lasted continuously for a period longer than 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”), formally 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-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 (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)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the decedent last worked in 2004 thus 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 support of this claim, records from 2004 and 2007 were submitted which document treatment/hospitalizations for hypertension, diabetes mellitus, morbid obesity, pneumonia, thoracic spine strain, chronic renal insufficiency, hypoxemia, hypoxia, and shortness of breath.

On [REDACTED], the Claimant was admitted to the hospital with complaints of chest pain associated with shortness of breath. The Claimant was discharged on [REDACTED] with the diagnoses of acute paroxysmal atrial fibrillation with rapid ventricular response, chest pain, acute congestive heart failure with diastolic dysfunction with an ejection fraction of 50 to

55 percent, severe obstructive sleep apnea, morbid obesity, and non-insulin dependent diabetes mellitus.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were diabetes mellitus, congestive heart failure, hypertension, obesity, chronic low back pain, arthritis, and right shoulder pain. The physical examination revealed shortness of breath, sleep apnea, obesity, fatigue, chest pain with an ejection fraction of 50 – 55%, shortness of breath, edema (lower extremities), and right arm weakness with a limited range of motion. The Claimant was able to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday; able to perform simple grasping and fine manipulation with both upper extremities; and able to reach, push, and pull with his right hand/arm.

On [REDACTED], the Claimant was admitted to the hospital after a past medical history of congestive heart failure, hypertension and diabetes with complaints of a right shoulder injury and rapid ventricular rate. A consultative examination noted the Claimant's past medical history significant for hypertension, diabetes, and morbid obesity. Further, the Claimant's need for oxygen, breathing treatments, and inhaler was documented. The Claimant was 6' in height and weighed 332 pounds. The Claimant was discharged on [REDACTED] with a diagnosis of paroxysmal atrial fibrillation with rapid ventricular rate, right proximal humerus fracture, decompressive diastolic congestive heart failure, and history of diabetes mellitus type 2, hypertension, morbid obesity, and sleep apnea.

On [REDACTED], the Claimant passed. The stated reasons on the Certificate of Death were hypoxia hypoxemia congestive heart failure, hypertension, and diabetes mellitus.

The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In this case, the Claimant presented medical evidence establishing that he did have physical limitations on his ability to perform basic work activities. The medical evidence established that the Claimant had an impairment, or combination thereof, that had more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairment(s) 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 disabling impairments due to hypoxia hypoxemia congestive heart failure, hypertension, and diabetes mellitus. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 4.00 covers cardiovascular impairments while Listing 9.08 defines the necessary requirements for diabetes mellitus. As discussed above, disability is defined as "any medically determinable physical or mental impairment which can be expected to result in death..." In this case, the medical records support the finding that the Claimant had medically determinable impairments which resulted in his death. The Claimant's impairments were obviously severe and meet, or were the equivalent thereof, a listed impairment within Listing 4.00 and/or 9.08. According, 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 was 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 May 11, 2009 application to determine if all other non-medical criteria are met and inform the Claimant's authorized representative of the determination.
3. The Department shall supplement for any lost benefits the Claimant was otherwise entitled to receive if otherwise eligible and qualified in accordance with Department policy.

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.

CMM/jlg

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