

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

**IN THE MATTER:**

[REDACTED]

Reg. No.: 2010-35306  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: August 5, 2010  
Oakland County DHS (03)

**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 Walled Lake, Michigan on Wednesday, August 4, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] and [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 July 27, 2009.
2. On October 15, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled. (Exhibit 1, pp. 2, 3)
3. On November 4, 2009, the Department sent a Notice of Case Action to the Claimant informing him that he was found not disabled. (Exhibit 1, pp. 5 – 8)

4. On January 28, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On May 26, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant's alleged physical disabling impairments are due to back pain, shortness of breath, chest pain, ischemic heart disease, and stroke.
7. The Claimant's alleged mental disabling impairment(s) are due to depression.
8. At the time of hearing, the Claimant was 51 years old with a [REDACTED] birth date; was 6' 7" in height; and weighed 220 pounds.
9. The Claimant has a Bachelor's Degree and a work history as a substitute teacher, coach, and job developer.
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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental

impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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 due to back pain, shortness of breath, chest pain, ischemic heart disease, stroke, and depression.

On [REDACTED], the Claimant was admitted to the hospital with complaints of left upper extremity numbness/weakness and slurred speech. A CAT scan revealed early ischemic changes in the right middle cerebral artery distribution consistent with an acute stroke. An echocardiogram revealed trace mitral regurgitation, trace tricuspid regurgitation, trace pulmonary insufficiency, left ventricular dysfunction with an underlying ejection fraction of 20%, and global hypokinesis. The Claimant was discharged on [REDACTED], with the diagnoses of acute right middle cerebral artery CVA with left hemiparesis, dyslipidemia, and cardiomyopathy.

The Claimant attended physical therapy from approximately [REDACTED] through [REDACTED].

On [REDACTED], the Claimant attended a follow-up cardiovascular appointment. The Claimant was diagnosed with stroke, systolic heart failure with an ejection fraction of less than 20%, hypertension, and dyslipidemia. The Claimant needs cardiac catheterization.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were CVA and cardiomyopathy. The Claimant was limited to occasionally lift/carry 10 pounds; stand and/or walk less than 2 hours during

an 8 hour workday with sitting less than 6 hours during this same time period; and able to perform repetitive actions with his right extremities only.

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 and mental 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 and mental disabling impairment(s) due to back pain, shortness of breath, chest pain, ischemic heart disease, stroke, and depression.

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 presented to the hospital with left side numbness/weakness and slurred speech as a result of a stroke. The Claimant also experienced chest pain. Testing confirmed that the Claimant has systolic heart failure with an ejection fraction of less than 20% while in a period of stability. The Cardiologist determined that the Claimant needed cardiac catheterization almost one year ago. Further, the Claimant testified regarding his restrictions relating to his ability to independently initiate, sustain, or complete activities of daily living. The limitations are also supported by the medical evidence (DHS-49). Based on the foregoing, it is found that the Claimant's impairment(s) meet, or is 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 July 27, 2009 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*

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

Date Signed: 8/05/2010

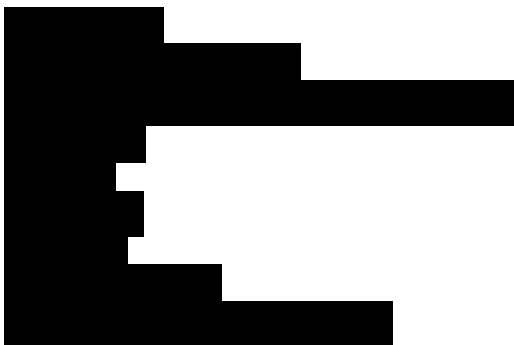
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**NOTICE: Administrative Hearings may order a** rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or 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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