

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

IN THE MATTER OF:

[REDACTED]

Reg. Nos.: 2010-9380
2010-33684
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 14, 2010
DHS County: Wayne (82-17)

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 Detroit, Michigan, on Monday, June 14, 2010. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The evidence was received, reviewed, and entered as Exhibit 3 and Claimant Exhibits A-C. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit 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. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on January 20, 2010.
2. On January 27, 2010, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 8, 9)

3. The Department notified the Claimant of the MRT decision.
4. On April 23, 2010, the Department received the Claimant's timely written request for hearing specifically protesting the denial of the January 2010 application. (Exhibit 1, p. 2)
5. On May 18, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments due to chronic obstructive pulmonary disease ("COPD"), chest pain, high blood pressure, congestive heart failure status post angioplasty and pacemaker insertion, cardiomyopathy, and diabetes mellitus with neuropathy.
7. The Claimant has not alleged any mental disabling impairments.
8. The Claimant is 55 years old with an [REDACTED], birth date; is 5'7½" in height; and weighs 200 pounds.
9. The Claimant has a limited education and an employment history in work at fast food restaurants and in light assembly.
10. The Claimant's impairments have lasted, or are expected to last continuously for a period of 12 months or longer.

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, formerly known as the Family Independence Agency, 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 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 (e.g., 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 to 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 3 to Step 4. 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 4 and 5. 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). As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial gainful activity. 20 CFR 416.920(a)(4)(i). 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 the record presented, the Claimant is not involved in substantial gainful activity. 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 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 COPD, chest pain, high blood pressure, congestive heart failure status post angioplasty and pacemaker insertion, cardiomyopathy, and diabetes mellitus with neuropathy.

On [REDACTED], the Claimant was admitted to the hospital with pneumonia and congestive heart failure. The Claimant's medication non-compliance due to the lack of insurance was noted. The Claimant was discharged on [REDACTED] with the diagnoses of pneumonia, diabetes, hypertension, cardiomyopathy, and congestive heart failure.

On [REDACTED], the Claimant was treated for a cough and dyspnea.

On [REDACTED], the Claimant was treated for her diabetes.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were high blood pressure, congestive heart failure, and "foot failer" [sic]. The Claimant was able to occasionally lift/carry less than 10 pounds and able to perform repetitive actions with her extremities.

On [REDACTED], the Claimant was admitted to the hospital with complaints of difficulty in breathing. Chest x-rays revealed congestive heart failure and the echocardiogram was positive for cardiomyopathy. The ejection fraction was 20 percent. The Claimant was discharged on [REDACTED] with the diagnoses of exacerbation of systolic congestive heart failure, diabetes, aortic root aneurysm, severe pulmonary hypertension, hyperglycemia, hypertension, COPD, electrolyte imbalance including hyponatremia, acute kidney injury, status post automated implantable cardioverter-defibrillatory ("AICD"), and hematoma.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were pulmonary hypertension, COPD, fibrosis, cardiomyopathy, aortic root aneurysm, and hypertension. The Claimant was restricted to the occasional lifting/carrying of less than 10 pounds; sitting about 6 hours during an 8-hour workday; and able to perform repetitive actions with her extremities.

On [REDACTED], the Claimant attended a new patient evaluation with the resulting diagnoses of non-ischemic cardiomyopathy, status post angioplasty and pacemaker insertion, history of COPD, neuropathy, and congestive heart failure, hypertension,

questionable history of fibromyalgia, seasonal allergies, and post menopausal. The Claimant's medication non-compliance was also documented.

On [REDACTED], the Claimant sought treatment for increased leg swelling. Due to a lack of insurance, the Claimant was not compliant with her medications. The Physician opined that the Claimant needed close monitoring due to her advanced cardiac status, diabetes, and multiple comorbidities.

On [REDACTED], the Claimant was admitted to the hospital with complaints of chest pain and shortness of breath. The Claimant was placed on oxygen and treated with IV steroids and nebulizer. The Claimant was discharged on [REDACTED] with the diagnoses of acute bronchitis, acute exacerbation of COPD, costochondritis secondary to coughing, hypertension, congestive heart failure, and diabetes mellitus.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension, COPD, diabetes, congestive heart failure, neuropathy, medical non-compliance, fibromyalgia, and cardiomyopathy with an ejection fraction of less than 20 percent. The Claimant was in stable condition and limited to the occasional lifting/carrying of less than 10 pounds; standing and/or walking less than 2 hours in an 8-hour workday; able to perform repetitive actions with her upper extremities; and unable to operate foot and leg controls. The Claimant's neuropathy is due to her diabetes.

On [REDACTED], the Claimant attended a consultative ophthalmologic examination. The uncorrected visual acuity on the right side was 20/50 and 20/40 on the left. The uncorrected near acuity was 20/400 on each side. With corrective lenses the Claimant's vision was 20/20 in both eyes. The diagnoses were hyperopia and presbyopia.

On this same date, the Claimant attended a consultative physical examination. The Internist opined that the Claimant would be able to work 8-hours a day and was able to sit, stand, walk, and lift at least 5 pounds. The diagnoses were hypertension, COPD, congestive heart failure (class II to III), diabetes type II, and status post coronary angioplasty and insertion of pacemaker.

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 some medical evidence establishing that he does have some physical limitations on 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 asserts disabling impairments due to COPD, chest pain, high blood pressure, congestive heart failure status post angioplasty and pacemaker insertion, cardiomyopathy, and diabetes mellitus with neuropathy.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), and Listing 9.00 (endocrine system) were considered in light of the objective medical evidence. Ultimately, it is found that the Claimant suffers from serious medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of a listing. The Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing

a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment in fast food restaurants and in light assembly. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled light work.

The Claimant testified that she is able to walk less than one block; lift/carry about 3 pounds; stand for 20 minutes; sit for short periods of time; and is unable to bend and/or

squat. The objective medical evidence places the Claimant at a sedentary level. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is 55 years old and, thus, is considered to be of advanced age for MA-P purposes. The Claimant has a limited education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry. Individuals of advanced age are found to be significantly affected in their ability to adjust to other work. 20 CFR 416.963(e)

In this case, the evidence reveals that the Claimant suffers from COPD, congestive heart failure, pulmonary hypertension, and diabetes mellitus. In consideration of the foregoing and in light of the treating physician's restrictions, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.01, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A

person is considered disabled for SDA purposes 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 automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, the Claimant is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall process the January 20, 2010, application to determine if all other non-medical criteria are met and inform the Claimant and her Authorized Representative of the determination in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) 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 April 2012 in accordance with Department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: April 5, 2011

2010-9380 and 2010-33684/CMM

Date Mailed: April 5, 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.

CMM/pf

cc:

