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

IN THE MATTER OF:

[redacted]

Reg. No.: 2011-3604
Issue No.: 2009
Case No.: [redacted]
Hearing Date: March 23, 2011
DHS County: Wayne (82-82)

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 Detroit, Michigan on Wednesday, March 23, 2011. The Claimant did not appear for the hearing; however, his Authorized Hearing Representative, [redacted], appeared and testified. [redacted] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the 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 an application for public assistance seeking MA-P benefits on July 2, 2010.

2. On July 13, 2010, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. The Department notified the Claimant of the MRT determination on July 15, 2010. (Exhibit 4)

4. On October 11, 2011, the Department received the Claimant's timely written request for hearing. (Exhibit 5)

5. On March 9, 2011, the Claimant was transferred to Hospice care due to his advanced cancer.

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 CRF 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). 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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is in Hospice care and, thus, is not involved in substantial gainful activity and is; therefore, not ineligible for 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 cancer.

On [redacted], the Claimant presented to the hospital with complaints of acute respiratory distress. The Claimant was intoxicated and urine toxicology showed positive for cocaine and hyponatremia. The Claimant underwent an emergent tracheostomy. Ultimately, the Claimant was discharged on [redacted] with the diagnoses of squamous cell carcinoma of the larynx status post tracheotomy tube; acute DVT of the right upper extremity with chronic DVT of the lower extremity; hypertension; anemia; and a history of alcohol abuse and seizures. The Claimant was not a candidate for chemotherapy or palliative radiation therapy. The Claimant was enrolled in Hospice care due to his poor prognosis.

On [redacted], the Claimant was admitted to Hospice care due to a large squamous cell cancer of the supraglotic region with metastasis to the left neck. Despite medication, the Claimant continued to have "a lot of drainage" from his tracheotomy which required frequent suctioning. On [redacted], the Claimant was transferred to a Hospice residence for further Hospice care.

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 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 has alleged physical disabling impairments due to advanced cancer.

Listing 13.00 discusses malignant neoplastic diseases. This listing is used to evaluate all malignant neoplasms, except certain neoplasms associated with human immunodeficiency virus ("HIV") infection. 13.00A. Origin of the malignancy, extent of involvement, duration/frequency/response, and effects of post-therapeutic residuals are factors of consideration. 13.00B(1)-(4). Evidence about recurrence, persistence, or progression of the malignancy, the response to therapy, and any significant residuals may be required. 13.00D4. In many cases, malignancies meet listing criteria only if the therapy does not achieve the intended effect: the malignancy persists, progresses, or recurs despite treatment. 13.00G1. Multimodal therapy is a combination of at least two types of treatment modalities given in close proximity as a unified whole and usually planned before any treatment has begun. There are three types of treatment modalities: surgery, radiation, and systemic drug therapy (chemotherapy, hormonal therapy, and immunotherapy). Examples of multimodal therapy include surgery followed by chemotherapy or radiation; chemotherapy followed by surgery; or chemotherapy and concurrent radiation. 13.00I3.

Listing 13.02 discusses tumors of the head and neck. To meet (in part) this listing, the mass must be inoperable/unresectable or with metastases beyond the regional lymph nodes.

In this case, the evidence establishes that the Claimant is suffering from a large squamous cell cancer of the supraglotic region with metastasis to the left neck. The Claimant is not a candidate for chemotherapy or radiation treatment. Due to his advanced illness, the Claimant is in Hospice care. Under these facts, it is found that the Claimant's impairment(s) meets Listing 13.02. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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 benefit program.

Accordingly, it is ORDERD:

1. The Department's determination is REVERSED.

2. The Department shall process the July 2, 2010, application to determine if all other non-medical criteria are met and inform the Claimant and his 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.

Colleen M. Mamelka

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

Date Signed: March 24, 2011

Date Mailed: March 24, 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: [redacted]