

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-1801
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 25, 2012
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 Detroit, Michigan on Wednesday, January 25, 2012. The Claimant appeared, along with [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 records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On June 27, 2012, this office received the SHRT determination which found the Claimant not disabled. 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") 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 8, 2011.

2012-1801/CMM

2. On July 22, 2011, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 2, pp. 2, 3)
3. The Department notified the Claimant of the MRT determination.
4. On September 27, 2011, the Department received the Claimant’s written request for hearing.
5. On November 17, 2011 and June 21, 2012, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments due to congestive heart failure with shortness of breath.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 5’9” in height; and weighed 255 pounds.
9. The Claimant is a high school graduate with vocational training and an employment history as an independent contractor and at an oil change/tire repair business.

CONCLUSIONS OF LAW

The Medical Assistance 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, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Tables (“RFT”).

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 416.913. 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 416.945(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).

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 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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 congestive heart failure with shortness of breath.

2012-1801/CMM

On [REDACTED] the Claimant presented to the hospital with complaints of sudden onset of heart palpitations and chest pain with shortness of breath. An echocardiogram showed an ejection fraction of 30 to 35 percent with segmental wall motion abnormalities. A CT of the thorax showed diffuse reticular nodule, infiltrative change s bilaterally, most pronounced in the right upper lung field. The Claimant was treated and discharged on [REDACTED] [REDACTED] with the diagnoses of atrial fibrillation, cardiomyopathy, congestive heart failure, aspiration pneumonia, mediastinal adenopathy, hyperglycemia, and metabolic syndrome.

On [REDACTED] an echocardiogram revealed trace mitral and tricuspid regurgitation and moderately dilated right atrium. The Claimant's left ventricle ejection fraction was 30 – 35 percent along with segmental wall motion abnormalities.

On [REDACTED] a consultative physical examination revealed decreased air entry, occasional basal crepitations, right ankle restricted range of motion, and, based on the pulmonary function test, obstructive lung disease. A pulmonary function test showed a Forced Expiratory Volume at 1 second ("FEV₁") of 1.42, 1.29, and 1.11 before bronchodilator and a Forced Vital Capacity ("FVC") of 2.57, 2.38, and 2.20. After the bronchodilator the FEV₁ was 1.67, 1.16, and .87 and the FVC 2.84, 2.08, and 1.86. The results confirmed severe obstruction. The diagnoses were obesity; hypertension; possible seizure episodes; history of congestive heart failure, atrial flutter, and cardiac arrhythmia; history of asthma, obstructive lung disease, and pulmonary insufficiency; status post fracture and surgery of the right ankle; and post traumatic arthritis. Due to multiple medical problems, the Claimant was found unable to perform any exertional work or any job involving prolonged standing, walking, climbing, or carrying/lifting over 20 pounds. The Claimant was found disabled from work.

On [REDACTED] 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were (in part) hypertension, history of seizures, congestive heart failure, and heart arrhythmia. The physical examination documented a slight limp with the right ankle, obesity, wheezing, and a scar over the right lower leg. The Claimant's condition was stable and deteriorating.

On this same date, a Medical Needs form was completed on behalf of the Claimant. The diagnoses were hypertension, atrial fibrillation, and congestive heart failure. Seizures were not ruled out. The Claimant needed assistance with meal preparation, shopping, laundry, and housework. The Claimant was found able to perform sedentary and light work only.

On [REDACTED] a stress test was completed. The test was terminated after 3 minutes and 45 seconds due to significant fatigue, shortness of breath, and premature ventricular complex ("PVC"). The PVCs resolved in the recovery phase. The heart rate

2012-1801/CMM

was 61% of the maximum predicted for his age with blood pressure indicative of a hypertensive response to exercise.

On [REDACTED] a Heart Classification was completed on behalf of the Claimant. The Claimant had a Class I functional capacity and a Class B therapeutic classification.

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 minimus* 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 congestive heart failure and shortness of breath.

Listing 3.00 defines respiratory system impairments. Respiratory disorders, along with any associated impairment(s), must be established by medical evidence sufficient enough in detail to evaluate the severity of the impairment. 3.00A. Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment. *Id.* A major criteria for determining the level of respiratory impairments that are episodic in nature, is the frequency and intensity of episodes that occur despite prescribed treatment. 3.00C. Chronic obstructive pulmonary disease, due to any cause, meets Listing 3.02 if medical evidence establishes that the Claimant's forced expiratory volume (in one second) is equal to or less than 1.45 (based on the Claimant's 5'9" height).

Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal and respiratory system and may be a major cause of disability. 1.00Q; 3.00I.


In this case, the evidence confirms congestive heart failure, shortness of breath, and significant obstructive lung disease with a FEV₁ of 1.42, 1.29, and 1.11 before bronchodilator and 1.67, 1.16, and .87 post-bronchodilator. All but one of the values are below 1.45. The Claimant's condition was deteriorating and the consultative Internist found him unable to work. Based on the objective findings, it is found that the Claimant meets a Listing impairment within 3.00, specifically, 3.02. 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 ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the July 8, 2011 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for 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 accordance with Department policy in August 2013.



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

Date Signed: July 10, 2012

Date Mailed: July 10, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

2012-1801/CMM

The Claimant may appeal the Decision and Order to Circuit Court 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

