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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-37070
Issue No(s).: 2009
Case No.: [redacted]
Hearing Date: July 31, 2013
County: Monroe

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on July 31, 2013, from Monroe, Michigan. Participants on behalf of Claimant included Claimant; [redacted] Participants on behalf of the Department of Human Services (Department) included [redacted]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. The records were received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On December 13, 2013, this office received the SHRT determination which found Claimant not disabled.

This matter was re-assigned to the undersigned Administrative Law Judge for a final determination of Claimant's disability.

ISSUE

Did the Department properly determine that 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. On January 9, 2013, Claimant submitted an application for public assistance seeking MA-P benefits, with retroactive coverage to December 2012.

2. On March 8, 2013, the Medical Review Team (MRT) found Claimant not disabled.

3. On March 14, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of not disabled.

4. On March 25, 2013, the Department received Claimant's timely written request for hearing.

5. On June 13, 2013, and December 9, 2013, SHRT found Claimant not disabled.

6. Claimant alleged physical disabling impairment due to chronic obstructive pulmonary disease (COPD), chest pain, and deep vein thrombosis (DVT).

7. Claimant alleged mental disabling impairments due to depression and anxiety.

8. At the time of hearing, Claimant was 45 years old with [redacted] birth date; he was 5'10" in height; and weighed 158 pounds.

9. Claimant is a high school graduate and has an employment history of work as a scrap metal worker, prep cook, construction laborer, auto mechanic, and production line worker.

10. 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 Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Department policies are found in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (RFT).

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 260); BEM 261 (July 2013), p. 1. In order to receive MA benefits based upon disability, Claimant must be disabled as defined in Title XVI of the Social Security Act. 20 CFR 416.901. Disability for MA purposes 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).

In order to determine whether or not an individual is disabled, federal regulations require application of a five-step sequential evaluation process. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider (1) whether the individual is engaged in substantial gainful activity; (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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)

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is substantial gainful activity (SGA), then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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). 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); see also *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may 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). However, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant alleges disability due to COPD, chest pain, DVT, depression and anxiety.

On [redacted] Claimant went to the emergency department complaining of sudden stabbing chest pain accompanied by shortness of breath, vomiting and diarrhea, and he was admitted. Claimant was diagnosed with deep vein thrombosis, hemoptysis, anxiety, acute chronic heart failure, pulmonary congestion, and dilated cardiomyopathy. He admitted a history of drug abuse but stated that the last time he used any drug, including cocaine, was a few years prior. An examination of extremities showed no edema but there was some tenderness in the right lower extremity posteriorly. Claimant's symptoms were treated with a regimen of medications and a series of diagnostic tests were performed.

A CT of Claimant's chest showed no pulmonary embolism or dissecting aneurysm and minimal pleural effusion at the posterior right base and minimal subsegmental atelectasis at posterior right and left base. Chest x-rays showed prominent pulmonary vascularity with prominent lung markings; lungs free of pneumonic consolidation; minimal free fluid collection; no free air underneath the diaphragm; and slight emphysematous. The chest x-rays confirmed minor COPD and minor pulmonary congestion. A [redacted] echocardiogram showed (i) severely decreased LV ejection fraction, (ii) severely increased left ventricular cavity size, (iii) moderately dilated left atrium; (iv) moderate mitral valve regurgitation; (v) mild to moderate pulmonic valve regurgitation; (vi) mild to moderate tricuspid valve regurgitation; and (vii) moderately elevated pulmonary artery systolic pressure. A [redacted] catheterization showed normal hemodynamics and normal size aorta. There was no sign of aortic or mitral stenosis and no aortic regurgitation. The left anterior descending (LAD) and circumflex had 25% to 30% lesions but no other significant abnormalities. However, the doctor noted a severely dilated left ventricle with ejection fraction of 10% to 15% with no mitral regurgitation. The doctor who interpreted the catheterization recommended aggressive medical therapy and suggested automatic internal cardiac defibrillator if medical therapy did not help with the left ventricular dysfunction. Claimant became bradycardia on [redacted] with his heart rate coming down to the lower 40s bpm, possibly secondary to his prescription, Coreg. He was also seen by psychiatry for his anxiety and depression arising from his medical condition and prescribed medication for those issues. Claimant was discharged on [redacted] in stable condition. He was advised not to work for two months.

On [redacted] Claimant was seen at the emergency department complaining of chest pains and injury to his right hand. An x-ray of the hand showed no obvious soft tissue swelling and no fracture or dislocation. Chest x-rays show changes in Claimant's COPD compared to [redacted]. The heart was observed to be at the upper limit of normal in size. Lungs were clear. Pulmonary vascularity was normal. There was no effusion or consolidation. The doctor concluded that the x-rays showed COPD with no superimposed acute infiltrate or evidence of congestive heart failure.

On [redacted] Claimant's cardiologist, who had been treating Claimant since [redacted] submitted a letter stating Claimant had severe nonischemic cardiomyopathy (ejection fraction 10-15%). According to the cardiologist, Claimant continued to experience symptoms of low cardiac output, including lightheadedness and near syncope, and because his condition which would continue to affect him throughout his lifespan, Claimant would be unable to work. The doctor submitted a medical examination report, DHS-49, showing Claimant's diagnosis for severe nonischemic cardiomyopathy and COPD. He was listed in stable condition with a note that he was referred to [redacted] transplant candidacy. The doctor did not list any restriction for repetitive actions concerning Claimant's hands/arms and feet/legs but indicated that no lifting was advised and, with respect to standing/walking and sitting restrictions, indicated that Claimant was not advised to work. The report listed that Claimant's ejection fraction was 10% to 15%. Claimant's [redacted] echocardiogram and

the [redacted] cardiac catheterization was referenced in the cardiologist's report.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

In connection with the medical evidence showing diagnosis of, and treatment for, nonischemic cardiomyopathy, Listing 4.02 (chronic heart failure) was considered. To establish a listing under 4.02, the following is required:

> ***Chronic heart failure*** while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are 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.

The medical record in this case shows that Claimant was diagnosed with chronic heart failure. He was on a medical regimen at the time he was admitted to the hospital on [redacted] The [redacted] cardiac catheterization performed on Claimant showed a severely dilated left ventricle with ejection fraction of 10% to 15% with no mitral regurgitation. Claimant's [redacted] echocardiogram also showed severely decreased left ventricular ejection fraction and severely increased left ventricular cavity size, as well as moderately dilated left atrium, moderate mitral valve

regurgitation, mild to moderate pulmonic valve regurgitation, mild to moderate tricuspid valve regurgitation, and moderately elevated pulmonary artery systolic pressure. This evidence satisfied the first requirement for a listing under 4.02(A).

Claimant's cardiologist, who had treated Claimant since [redacted], completed a medical exam report, DHS-49, on [redacted] in which he indicated that Claimant continued to experience symptoms of low cardiac output, including lightheadedness and near syncope. Although Claimant's condition was stable, the cardiologist limited him from any physical exertion at all. The doctor also noted that Claimant had been referred to [redacted] heart transplant candidacy. The doctor referred to the test results in the echocardiogram to support his position. It is further noted that the doctor who interpreted the catheterization recommended aggressive medical therapy and suggested automatic internal cardiac defibrillator if medical therapy did not help with the left ventricular dysfunction. This evidence satisfied the requirements under B(1) of Listing 4.02.

Because Claimant's condition satisfies both requirements of both A and B of Listing 4.02, his chronic heart failure meets the severity of the criteria in Appendix 1 of the Guidelines to be considered as disabled. Accordingly, Claimant is disabled and no further analysis is required.

DECISION AND ORDER

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

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process Claimant's January 9, 2013, MA application, with request for retroactive coverage to December 2012, to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;

2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;

Review Claimant's continued eligibility in July 2015.

Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 17, 2014

Date Mailed: June 18, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

ACE/pf

cc: [redacted]