

inadequate. However, she was able to exercise at 5 METs (metabolic equivalent units), the level required to make an assessment. No cardiovascular abnormalities were discovered as a result of that test.

3. The petitioner's treating physician then recommended that the petitioner be given a "thallium treadmill test" which he described as a standard test designed to provide a "more accurate and sensitive means of determining the cause of chest pain." His letters are attached hereto and incorporated into the facts as Exhibit 1.

4. DDS opposes ordering and paying for this test because it believes the EKG test she took provided sufficient information for the Department of evaluate her under the Listings of Impairments at 20 C.F.R. Part 404, Subpart P, Appendix 1, 4.00 F.2,. DDS stated that it "has all the information it needs to determine disability. A thallium stress test would not add to or change the result, but would only offer at most controverted evidence."

ORDER

The Department is ordered to requisition and pay for a thallium treadmill stress test for the petitioner.

REASONS

The Board has previously held that the Department has the obligation to assist applicants in obtaining medical evidence necessary to documenting and evaluating their

claims. See Fair Hearing No. 6144. In claims in which the principal disabling condition is pain, a diagnosis and/or laboratory findings, though not conclusive, are especially significant. 20 C.F.R. § 416.929; Marcus v. Califano, 615 F.2d 23 (2d. Cir., 1979)

The petitioner in this matter claims long-standing anginal pain and relies on it as the primary impediment to engaging in substantial gainful activity. The Department has assisted her in maintaining this claim by purchasing a standard treadmill test for her which was negative. The issue is whether the Department is required to purchase further tests to fulfill its obligation to the petitioner.

The Department objects to purchasing a further test because it claims it is an arbitrary request by her physician which is unnecessary for a determination in this case. Clearly, the Department has the right, and, indeed, the obligation, to preserve its funds and to deny expensive medical procedures when it is not reasonable to expect that they will produce any additional evidence relevant to the outcome of the claim. That determination must be made on a case by case basis after a careful analysis of the facts and the opinion of the petitioner's treating physician(s).

In this case, the petitioner's treating physician presented facts and opinions indicating that the petitioner has described long-standing symptoms of anginal chest pain consistent with a diagnosis of cardiovascular disease; that the treadmill EKG test which she took is not as sensitive

and accurate as the thallium treadmill test which she previously took; that the proposed test is a standard diagnostic procedure; and that if she "passes" the proposed test there would be no need to proceed with cardiac catheterization as a further diagnostic procedure. The petitioner's argument, in sum, is that the test she took did not confirm her tentative diagnosis but did not rule out cardiovascular disease and, given her symptoms and her probable diagnosis, it makes sense to perform a more sophisticated test which should either confirm or refute that diagnosis. Without that diagnosis, the petitioner fears she will be unable to meet her burden of presenting "sufficient clinical and laboratory evidence" showing that her impairment is the "result of an anatomical or physiological abnormality" as required by Social Security regulations. See 20 C.F.R. § 416.908.

The Department has presented absolutely no evidence refuting the facts and opinions of the petitioner's treating physician. The gist of its opposition appears to be the fact that the test the petitioner has taken provides a basis for a finding that she is not disabled under the listings of impairment. 20 C.F.R. § 404, Subpart P, Rule 4.04. The Department does not argue that the test already taken eliminates the possibility of a diagnosis of cardiovascular disease, that the petitioner's signs and symptoms do not warrant further testing, or that the test requested is inappropriate or unnecessary. The Department does admit

that the test might produce "controverted evidence" the first test, which admission supports rather than refutes the petitioner's contention that abnormalities may appear on a more sensitive test.

It must be concluded based on the above evidence that the petitioner's request for further stress testing is a reasonable one which is calculated to produce evidence probative of her medical condition and important to maintaining her claim. Unfortunately, it must also be concluded that DDS's reasoning illustrates a disturbing lack of analysis of the facts in this situation and indicates that development of the evidence here ceased once there was some basis for finding that the petitioner was not disabled under the listings, in spite of considerable evidence and opinion that another test might prove otherwise, or that her condition might be shown to be severe enough to at least equal the listings. The Department's position that the results of the test would not affect its decision is astoundingly contrary to the rules of disability determination and is grossly unjust to the petitioner.

The issue of the "invasive" (the fact that the petitioner is required to be injected with a radioactive tracer) nature of the requested testing was also tangentially raised by DDS as a reason to refuse the requested testing. The Board has previously ruled, and it should be strongly noted again, that "invasive" tests which are ordered by the petitioner's physician, which are

medically-accepted and commonly-performed diagnostic procedures, and risks any of which the petitioner is willing to assume, should be purchased if they are otherwise medically necessary. See Fair Hearing No. 6144. The Department's obligation to purchase probative medical evidence should not be confused with the petitioner's right (not the Department's right) to refuse undergoing diagnostic tests which are "invasive" in nature if the circumstances so warrant. 20 C.F.R. § 416.915-918.

Under 3 V.S.A. § 2091(d) and Fair Hearing Rule No. 19, the Board has the authority to order the Department to arrange and pay for diagnostic examinations. Fair Hearings No. 5969, 6144. As the diagnostic test requested by the petitioner is "not only reasonable but perhaps indispensable to a basic understanding of the petitioner's condition and to any meaningful evaluation of [her] allegation", the Department should be ordered to purchase the thallium treadmill test. Fair Hearing No. 6144.

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