

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

SOAHR Docket No. 2006-3775REHD
DHS Reg No: 2006-17499
Case No: [REDACTED]

[REDACTED]

Claimant

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ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order of Rehearing granted on October 23, 2008. Claimant was represented by [REDACTED] c.

ISSUE

Did the department properly determine that claimant did not meet the disability standard for Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- 1) On July 28, 2006, Administrative Law Judge (ALJ) Rhonda P. Craig issued a decision & Order in which she upheld the Department of Human Services (DHS) denial of Claimant's application for MA-P and SDA benefits.
- 2) On August 19, 2005, Claimant applied for MA-P, retro MA-P, and SDA benefits.
- 3) Claimant applied for disability benefits based on having cellulites in his right upper extremity and hypokalemia.
- 4) On November 29, 2005, the Medical Review Team (MRT) denied Claimant's request for MA-P and SDA.

- 5) On December 1, 2005, the Department sent Claimant written notice of the denial of MA-P benefits. (Exhibit 1, p. 5)
- 6) On February 28, 2006, the Department received Claimant's hearing request, protesting the denial of MA-P and retro MA-P benefits.
- 7) Claimant was hospitalized from June 18, 2005 to July 5, 2005, due to rash with asymmetrical polyarthritis, and it was indicated that he had no past medical history except for a history of alcohol dependence. (Exhibit 1, p. 42)
- 8) After being hospitalized in June 2005, Claimant's echocardiogram revealed aortic valve vegetation with moderate aortic insufficiency and a possible small ventricular septal defect, and the plan was for Claimant to be transferred to ██████████ ██████████ for surgical treatment with aortic valve replacement for pneumococcal endocarditis with aortic valve vegetation. (Exhibit 1, p. 43)
- 9) According to the radiology report of Claimant's chest, dated June 18, 2005, there was no active intrathoracic disease. (Exhibit 1, p. 177)
- 10) The CAT scan of Claimant's brain, done on June 22, 2005, did not reveal any evidence of an intracerebral hemorrhage. (Exhibit 1, p. 178)
- 11) According to the radiology report dated June 23, 2005: there was effusion in Claimant's right knee joint; the views of Claimant's right hand did not demonstrate any evidence of an acute fracture or dislocation, and there were no other abnormalities; there were no abnormalities of the right wrist, left hand, or left wrist; the views of the left foot revealed degenerative osteoarthritic changes at the cuboid metatarsal joint with degenerative spurring at the talonavicular joint, but there was no acute fracture or dislocation. (Exhibit 1, pp. 180 & 180)
- 12) Claimant's MRI of the right shoulder done on June 25, 2005, revealed an abnormal appearing supraspinatous tendon probably related to a rotator cuff tear as well as a SLAP tear. (Exhibit 1, p. 185)
- 13) Claimant's MRI of his brain done on June 28, 2005, revealed a markedly limited examination due to patient motion with small focal non-enhancing signal abnormality involving the cortex of the right parietal lobe at the convexities suspicious for an acute to subacute infarct. (Exhibit 1, pp. 185 & 186)
- 14) Claimant was hospitalized from July 6, 2005 to July 15, 2005, for aortic valve replacement; during his hospital stay, Claimant's sepsis resolved; on July 8, 2005, Claimant underwent surgery for aortic valve replacement and tolerated the

procedure well; and Claimant was discharged home in stable condition. (Exhibit 1, pp. 20-23)

- 15) The MRI of Claimant's bilateral feet, done on July 6, 2005, revealed soft tissue swelling and muscle edema bilaterally, which may have been due to cellulites versus trauma. (Exhibit 1, p. 184)
- 16) Claimant was hospitalized July 15, 2005 to August 6, 2005, for completion of long-term intravenous antibiotic secondary to aortic valve endocarditis with pneumococcal bacteremia. (Claimant Exhibit A)
- 17) While hospitalized beginning July 15, 2005, Claimant tolerated antibiotic therapy well without complications. (Claimant Exhibit A)
- 18) On July 19, 2005, the x-ray of Claimant's right shoulder did not reveal any abnormal findings. (Claimant Exhibit A, p. 7)
- 19) According to a neurological examination report dated November 9, 2009: Claimant was 6'2" and 177 lbs; Claimant did not have any speech difficulty, his judgment was good, and his memory sharp; Claimant's blood pressure was 140/90; Claimant's cranial nerves and field of vision were normal as well as his eye movements; Claimant's hearing test was normal; Claimant's motor sensory exam revealed that his right arm motor power was weaker with 4/5 grade weakness, right leg showed 4/5 grade weakness, left leg muscle strength was normal, and Claimant had a limping gait; deep tendon reflexes were normal with left hand, right hand was difficult; finger to nose test was within normal limits; tandem gait was difficult, and Claimant was dragging his leg while walking; forward flexion of the spine was intact; and testing revealed full range of motion of all joints with no neurological deficits. (Claimant Exhibit A, pp. 8-12)
- 20) According to an examination report dated November 11, 2005, completed by an internist: Claimant had not worked since April 2005; Claimant was reportedly 6'2" and 150 lbs; his BP was 150/95; Claimant's gait was considered normal, and he was able to get on and off the examination table; Claimant was able to raise both arms above his head level, and he was not using a cane or assistive device; Claimant was able to dress and undress on his own; the examination of Claimant's head, eyes, ears, nose, and throat was normal; Claimant's chest and abdomen exam were normal; the examination of Claimant's bones and joints revealed that his straight leg raising was equal bilaterally, with peripheral pulses equal and good bilaterally; no gout deformities or nodules were noted; sensory exam was normal; power was mildly decreased about Grade 4-5 as compared to Grade 6 on the left side; Cerebellar function was normal; motor strength was equal bilaterally; deep tendon reflexes were 2+ in the upper and lower extremities; heel-to-knee and finger-to-finger, finger-to-nose testing was normal;

Claimant's gait was normal, and there was no wasting of muscles; Claimant's speech and memory appeared to be normal; orientation appeared to be normal; there were no localizing neurological signs; joint movements were normal; and the physical examination was otherwise unremarkable. (Exhibit 1, pp. 13-15)

- 21) Claimant was a 49 year old male with an 11th grade education and past relevant work experience as a custodian.
- 22) Claimant was not engaged in SGA at any time relevant to this matter.
- 23) The State Hearing Review Team upheld the denial of MA-P and SDA.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 4000.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program, which provides assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

Current legislative amendments to the Act delineate eligibility criteria as implemented by agency policy set forth in program manuals. 2000 PA 294, Sec. 604, of the statute states:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.50, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

Pursuant to Federal Rule 42 CFR 435.50, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

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 a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being 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 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920 (c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment...20 CFR 416.929 (a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)...20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b) (1) (iv).

Basic work activities are the abilities and aptitude necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, 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. 20CFR 416.921 (b).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflects judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927 (a) (2).

All of the evidence relevant to the claim, including medical opinions, are reviewed and findings are made. 20 CFR 416.927 (c).

A statement by a medical source finding that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the program. 20 CFR 416.927 (e).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability... 20 CFR 416.994 (b)(4)(iv).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The administrative Law Judge reviews all medical findings and other evidence that support a medical source’s statement of disability... 20 CFR 416.927 (e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

- 1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920 (b).
- 2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920 (c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290 (d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920 (e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, §§ 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920 (f).

Claimant was not disqualified from receiving disability at Step 1, because he was not substantially gainfully employed at any time relevant to this matter. Therefore, the analysis continues to Step 2.

Claimant established that he had a severe physical impairment at the time relevant to this matter. However, he failed to establish that it prevented or was expected to prevent his ability to perform basic work activities for a continuous period of at least 90 days or 1 year. However, the finding of a severe impairment at Step 2 is a diminimus standard. Therefore, the analysis will continue to Step 3.

Claimant failed to establish a severe impairment which met or equaled a listing found at 20 CFR, Part 404, Subpart P, Appendix 1. Therefore, the analysis will continue to step 4.

The previous ALJ found that Claimant was unable to do his past relevant work as a custodian. This ALJ cannot find that Claimant established an inability to do his past relevant unskilled work for a continuous period of at least 90 days or 1 year. However, the analysis will continue to the last step of the sequential evaluation.

The Residual Functional Capacity (RFC) is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated...20 CFR 416.945 (a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor...20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967 (a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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...20 CCR 416.9677 (b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

This ALJ finds that Claimant was able to perform not only sedentary work, but light work at all times relevant to this matter. Claimant underwent a successful aortic valve replacement in July 2005, and was discharged from the hospital in stable condition. Claimant was hospitalized July 15, 2005 to August 6, 2005, for completion of long-term intravenous antibiotics secondary to aortic valve endocarditis with pneumococcal bacteremia. Claimant tolerated the antibiotic therapy well without any complications during his hospital stay. Claimant did submit a completed Medical Examination Report which indicates he is able to lift up to 10 lbs, stand/walk for 6 hours in an 8-hour workday, use both his hands/arms for simple grasping and fine manipulation, use his left hand/arm for reaching, pushing/ pulling; and use both his feet/legs for operating foot/leg controls. (Exhibit 1, pp. 29 & 30) This ALJ did not give the physician's opinion of Claimant's residual functional capacity much weight because it is not supported by the objective medical evidence on the record. Claimant underwent a neurological exam on November 9, 2005. Claimant's mental status exam was completely normal. At that time, Claimant had a mildly elevated blood pressure, 140/90. The examination did reveal Claimant to be dragging his leg while walking, and he had some residual weakness in the right arm and right leg. Claimant is right handed. However, his motor power revealed 4/5 grade weakness in the right arm and right leg, which is an indication that Claimant would be able to hold the position against strong to moderate resistance in the right arm and leg with full range of motion in those extremities. (See Manual on Muscle Testing and Rating Scale) Further, at that time, he had full range of motion of

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all joints, and no neurological deficits. Claimant was seen by an internist on November 11, 2005. His complete physical exam revealed the following: Power was only mildly decreased about Grade 4-5 on the right side; cerebellar function was normal; motor strength was equal bilaterally; joint movements were normal; gait was considered normal; and there was no wasting of muscles. The internist's exam revealed that: Claimant's general health was otherwise good; there was no evidence of congestive heart failure, asthma, gout...; and Claimant had just minimal weakness on the right side.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. At the time relevant to this matter, the previous ALJ correctly determined that Claimant was considered a young individual at 49 years old, with an 11th grade education and unskilled work experience at the time the Department denied his application for disability benefits. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Claimant's representative argues that Claimant was actually 50 at the time the previous ALJ issued her Decision and Order. Claimant turned 50 on December 31, 2005. At 50, Claimant would be considered an individual closely approaching advanced age. Using Medical Vocational Rule 202.10 as a guideline, Claimant was considered not disabled. According to this Medical Vocational Rule, an individual closely approaching advanced age, with just a limited education and able to communicate in English, with unskilled work experience, limited to light work, is **not disabled**.

In conclusion, Claimant does not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the MA-P and SDA decision is upheld.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Department properly determined that Claimant did not meet the MA-P and SDA disability standard.

