

**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. 2007-606REHD
DHS Reg No: 2007-00048
Case No: [REDACTED]

[REDACTED] (deceased),

Claimant

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 August 27, 2008. Claimant was represented by [REDACTED]. The record was held open to allow Claimant's representative to obtain additional medical documentation. After the additional documentation was received, it was forwarded to the State Hearing Review Team (SHRT) for review.

ISSUE

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

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 October 18, 2006, Administrative Law Judge (ALJ) Michael S. Silver issued a Decision & Order in which he upheld the Department of Human Services (DHS) denial of Claimant's application for MA-P and retro MA-P benefits.
- (2) Findings of Fact 1-19 from ALJ Silver's Decision & Order are incorporated herein by reference.
- (3) Claimant has a history of alcoholism, diabetes mellitus, and prostate cancer.

- (4) Claimant was hospitalized from March 29, to March 31, 2005, due to a gastrointestinal bleed.
- (5) On March 29, 2005, a CT of Claimant's pelvis revealed nonspecific mild focal small bowel mural thickening edema; and the CT of Claimant's abdomen did not reveal any significant abnormal findings.
- (6) On March 30, 2005, Claimant's Whole Body Bone Imaging did not reveal any evidence of metastatic process, however, there was mild arthritic changes involving both knees.
- (7) In April 2005, Claimant was diagnosed with prostate cancer.
- (8) Claimant submitted a DHS-49, Medical Examination Report, signed by his doctor on April 7, 2005, which indicates that Claimant's physical examination was normal, and Claimant did not have any physical or mental limitations on his ability to work.
- (9) On June 3, 2005, a medical doctor signed a Medical Examination Report, which indicates that Claimant was given a diagnosis of paresthesia of the bilateral feet, low back pain, and Type II diabetes, but did not have any physical or mental limitations on his ability to work.
- (10) On June 6, 2005, Claimant opted to undergo a radical retro pubic prostatectomy; and his urologist signed a Medical Examination Report, which indicates that Claimant was diagnosed with prostate cancer, and Claimant does not have any physical or mental limitations on his ability to work.
- (11) On August 3, 2005, the ultrasound of Claimant's abdomen revealed moderate ascites, and it was noted that the gallbladder wall thickening may be due to the chronic liver disease; no varices was detected; there was satisfactory flow in the hepatic artery and portal vein; and there was no evidence of hepatic vein thrombosis.
- (11) On August 11, 2005, Claimant's doctor signed a Medical Examination Report, indicating that: Claimant was diagnosed with diabetes, back pain, prostate cancer, cirrhosis; Claimant was 5'9", 168 lbs; Claimant is right-handed; the physical examination revealed fatigue, bilateral edema in Claimant's ankles, and Claimant was ambulating with an assistive device; and Claimant was unable to lift anything, he could stand/walk for less than 2 hours in an 8-hour day, he could only use his hands for simple grasping, he could not operate foot/leg controls, and he had mental limitations.

- (12) On August 17, 2005, Claimant's medical doctor signed a Medical Examination Report, indicating Claimant was unable to do at least a full range of sedentary work; however, Claimant's cardiovascular examination revealed slight edema, and there were no other significant abnormal findings noted under the physical examination section of the report.
- (13) On August 24, 2005, Claimant's medical doctor signed a Medical Examination Report, indicating Claimant had a fractured scapula and was unable to do at least a full range of sedentary work; however, the only abnormal finding noted under the physical examination section of the report was some stiffness in Claimant's shoulder, and Claimant was unable to flex more than 120 degrees.
- (14) On September 12, 2005, clinically, Claimant's scapula fracture was stable and healed; his spine exam was essentially benign and totally asymptomatic; Claimant was quite active without his brace; and Claimant was encouraged to participate in a regular exercise program.
- (15) According to a physical examination report dated October 20, 2005: Claimant complained of pain in his left shoulder, left arm, left elbow, left wrist, left hip, left knee, left leg, and left ankle; the examination revealed that the strength in Claimant's left upper extremity was satisfactory; Claimant has some generalized tenderness of the left wrist; Claimant has some pain on abductory external rotation of the left shoulder; the range of motion of Claimant's hips was satisfactory; and the examination of Claimant's left hip, left ankle, left knee, and left leg were overall satisfactory.
- (16) On November 8, 2005, the MRI of Claimant's left shoulder did not reveal a rotator cuff tear, however, there were degenerative changes involving the acromioclavicular joint, and an abnormal signal involving the posterior-superior labrum; and the MRI of his wrist revealed bone bruising, and a small incomplete non-displaced fracture, but no ligament injury was seen in the wrist joint.
- (17) Claimant did submit a Medical Examination Report that was signed by his doctor on December 29, 2005, and indicates Claimant was unable to do at least sedentary work; however, his physical examination was essentially normal.
- (18) According to an Independent Health Examination dated August 23, 2006: Claimant's diabetes mellitus was controlled with medication, and he did not have any target organ disease; Claimant's hypertension was controlled with medication that he was taking; Claimant was diagnosed

with prostate cancer 1 year prior and was still waiting for cryosurgery, but he was not having any problems with prostate cancer; he was not having any problems from cirrhosis of the liver and had stopped drinking alcohol; and Claimant's main problem appeared to be left shoulder arthritis with decreased range of motion as a result of a previous fracture.

- (19) Claimant had a high school education and past relevant work experience as a self-employed construction worker and pottery instructor.
- (20) Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
- (21) Claimant died on June 1, 2008, after falling at home on May 31, 2008; the manner of death was considered an accident and the cause of death was hemoperitoneum, ruptured spleen, blunt force abdominal trauma; and alcoholic liver cirrhosis was considered a significant condition contributing to death.

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).

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. There's no objective medical evidence from a qualified medical source, such as a licensed psychologist to establish that Claimant had a severe mental impairment which significantly affected his ability to work. Although Claimant established a severe physical impairment, 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 12 months or more. However, the finding of a severe impairment at Step 2 is a diminimus standard. Therefore, the analysis will continue to Step 3.

Claimant's representative requested that Claimant be approved for MA-P benefits retro to March 2005. According to Claimant's representative, Claimant met listing 1.02 found at 20 CFR, Part 404, Subpart P, Appendix 1:

1.02-Major dysfunction of a joint(s) due to any cause):
Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s) and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction or ankylosis of the affected joint (s).
With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle) resulting in inability to ambulate effectively as defined in 1.002b;

or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Claimant was hospitalized on March 29, 2005. However the CT scan of Claimant's pelvis revealed nonspecific mild focal small bowel mural thickening edema, and the CT scan of Claimant's abdomen did not reveal any significant abnormal findings. On March 30, 2005, Claimant's Whole Body Bone Imaging did not reveal any evidence of metastatic process, only mild arthritic changes involving both knees. On July 8, 2005, Claimant did fall from a roof and injured his spine and left side of his body. On September 12, 2005, Claimant's scapula fracture was considered stable and healed, clinically; the doctor noted that claimant had been quite active without his brace; and Claimant's spine exam was benign and totally asymptomatic. In October 2005, Claimant complained of pain in his left shoulder, left arm, left elbow, left wrist, left hip, left knee, left leg, and left ankle. His physical examination on October 20, 2005, revealed that the strength in his left upper extremity was satisfactory; he had some pain on abductory external rotation of the left shoulder; the range of motion of his hips was satisfactory; and the examination of his left hip, left ankle, left knee, and left leg were satisfactory overall. The MRI of Claimant's left shoulder did not reveal a rotator cuff tear, only degenerative changes involving the acromioclavicular joint, and an abnormal signal involving the posterior-superior labrum. The MRI of his

wrist revealed bone bruising and a small incomplete non-displaced fracture, but no ligament injury was seen in the wrist joint. This ALJ agrees with the previous ALJ's finding that Claimant's impairments did not meet or equal a listing.

There is no clinical evidence on the record to establish that Claimant was unable to do his past relevant construction work during the period of March through June 2005. The objective medical evidence does establish that effective July 2005, the month Claimant fell from a roof, Claimant was unable to do any heavy lifting or standing/walking for any prolonged period of time. These limitations would compromise his ability to do construction work. Therefore the analysis will continue.

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 CFR 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 agrees with the previous ALJ's finding that Claimant was able to perform light work based on the following reasons:

In April 2005, Claimant's doctor completed a Medical Examination Report, which indicates that Claimant's physical examination was normal, and the doctor did not place any physical or mental limitations on his ability to work. In June 2005, there were two Medical Examination Reports completed by a qualified medical source who indicated that Claimant did not have any physical or mental limitations on the ability to work. In the request for Rehearing/Reconsideration, Claimant's representative stated that one of claimant's treating physician's, [REDACTED], indicated on a Medical Examination Report dated August 16, 2005, that Claimant is in a complete body cast and disabled as he is in a body brace. The representative stated further that [REDACTED] was treating Claimant for cancer and advised Claimant to have radiation therapy; and Claimant suffered a collapsed lung, rib fracture, spine fracture, scapular body fracture and multiple bone fractures as a result of his fall in July 2005. The evidence on the record establishes that Claimant received physical therapy for his injuries in August 2005, and the orthopedic surgeon noted that Claimant was improving. [REDACTED] made it clear on the Medical Examination Report that he was not Claimant's primary care physician and could only speak to Claimant's prostate cancer for which Claimant was advised to have radiation treatment. Another medical doctor, [REDACTED], did complete a Medical Examination Report on August 17, 2005, indicating that Claimant was unable to do at least sedentary work, and Claimant was using a walker and in a back brace. However, [REDACTED] indicated that Claimant's medical condition was stable, and the only abnormal finding listed under the physical examination section of the report was that the cardiovascular examination revealed "slight edema." [REDACTED] indicated that the results of Claimant's respiratory exam, abdominal exam, and musculoskeletal exam were all normal. By September 12, 2005, Claimant's scapula fracture was stable and healed; his spine exam was essentially benign and "totally asymptomatic; and Claimant was quite active without his brace. [REDACTED] did complete and sign another Medical Examination Report on December 29, 2005, indicating that Claimant's condition was deteriorating, and Claimant was limited to less than sedentary work. However, [REDACTED] failed to provide the laboratory data or objective medical evidence to support his opinion. He did indicate that an MRI of Claimant's wrist and shoulder, and the CT and ultrasound of Claimant's abdomen supports his opinion of Claimant's physical limitations. Once again, the MRI of Claimant's left shoulder did not reveal a rotator cuff tear, only degenerative changes involving the acromioclavicular joint, and an abnormal signal involving the posterior-superior labrum. The MRI of Claimant's wrist revealed bone bruising, and a small incomplete non-displaced fracture. There was no ligament injury seen in the wrist joint. Lastly, the CT of Claimant's abdomen did not reveal any significant abnormal finding.

On August 2, 2005, Claimant was hospitalized due to a gastrointestinal bleed, and he underwent banding for esophageal varices secondary to chronic alcohol abuse. At the time of discharge, August 8, 2005, Claimant's vital signs were

stable; his lungs were clear throughout; and the examination of his abdomen and extremities did not reveal any abnormal findings. (Exhibit 1, p. 22) Dr. Seals indicated under the physical examination section of the report that Claimant's physical examination, including his abdominal, musculoskeletal, neurological examination, was essentially normal. There was no objective medical evidence of ascites or liver enlargement at the time of the physical examination on December 29, 2005. (Exhibit C1)

On August 24, 2005, [REDACTED], the orthopedic surgeon gave Claimant a current diagnosis of a fracture scapula which was healed by September 12, 2005. The only abnormal finding that was indicated in the Physical Examination section of the Medical Examination Report was tenderness and some stiffness in Claimant's shoulder, and Claimant was unable to flex more than 120 degrees.

In the Request for Rehearing, Claimant's representative mentioned Claimant's Spine x-ray. The x-ray of Claimant's cervical spine revealed only mild or minimal abnormal findings. There was no acute abnormality in Claimant's cervical spine. Claimant's representative argued in her Request for Rehearing that Claimant was clearly unable to work for a significant period of time while his multiple bones healed from the fall he suffered in July 2005. She stated further that Claimant was unable to perform significant gainful employment for a closed period of time, and the medical documentation supports this. However, Claimant must have 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) Based on objective medical evidence on the record, Claimant was not precluded from doing light work for a continuous period of 12 months due to the injuries he suffered in July 2005. Claimant did die on June 1, 2008. However, Claimant's died due to injuries he sustained from a fall at home on May 31, 2008.

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, Claimant was considered an individual closely approaching advanced age with a high school education and at least unskilled work experience. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rule 202.13 as a guideline, Claimant would be considered not disabled. According to this Medical Vocational Rule, an individual closely approaching advanced age, with a high school education and unskilled work experience, limited to light work, is not disabled.

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

SOAHR Docket No. 2007-606REHD
DHS Reg No: 2007-00048
Rehearing Decision

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 disability standard.

IT IS THEREFORE ORDERED that:

The Department's MA-P eligibility determination is AFFIRMED.

Marya A. Nelson-Davis
Administrative Law Judge
for Michigan Department of Human Services

Date Signed: May 5, 2009
Date Mailed: May 6, 2009

cc:



NOTICE ***

The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.