

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

SOAHR Docket No. 2009-25870 REHD
DHS Reg. No: 2009-22122



Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Claimant.

ISSUE

Did the Administrative Law Judge err when he determined the Claimant was not disabled and ineligible for Medical Assistance (MA-P), State Disability Assistance (SDA) and retro Medical Assistance (retro MA-P) ?

FINDINGS OF FACTS

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

1. On March 27, 2009, Administrative Law Judge (ALJ) Jana Bachman issued a Hearing Decision in which the ALJ affirmed the Department of Human Services' (DHS or Department) denial of the Claimant's December 10, 2007, application for MA-P, SDA, and retro MA-P.
2. On May 15, 2009, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a request for Rehearing/Reconsideration submitted by the Claimant.
3. On July 13, 2009, SOAHR granted the Claimant's request for reconsideration and issued an Order for Reconsideration. The record was reopened until August 14, 2009, in order to give the Claimant the opportunity submit new medical information which the ALJ failed to consider.

4. Subsequently on August 13, 2009, the Claimant submitted new medical information. The new medical information was submitted to the DHS State Hearing Review Team(SHRT) for review.
5. On November 20, 2009, the SHRT issued a decision in which it indicated that the Claimant was capable of performing his past relevant work and was not disabled.
6. Findings of Fact 1 -10 from the Hearing Decision, mailed on March 27, 2009, are hereby incorporated by reference.

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 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

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.

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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. 20 CFR 416.921(b).

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.

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).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect 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, is 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:

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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 416.920(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).

The ALJ correctly found the Claimant not ineligible for disability at Step 1 because the Claimant has not been engaged in substantial gainful activity since August 2007. Department Exhibit. Therefore, the Claimant is not disqualified from receiving disability at Step 1. The ALJ properly considered the Claimant's eligibility at Step 2.

On March 23, 2009, the Claimant underwent a consultative examination by [REDACTED]. [REDACTED] indicated that the Claimant has a history of headaches. The Claimant had markedly impaired vision and needed glasses. [REDACTED] indicated that the Claimant had chronic cervical spine pain with radiculopathy due to possible herniated discs. [REDACTED] also opined that the Claimant had a chronic left ankle pain due to a history of left ankle fracture. In addition, [REDACTED] indicated that the Claimant has myofactitis and left knee and shoulder pain. [REDACTED] recommended follow up with a physiatrist or physical medicine specialist and an eye examination and fitting for eye glasses.

On August 13, 2009, the Claimant faxed new Medical information to SOAHR. This new medical consisted of an unsigned medical report completed August 6, 2009, by an unknown health professional because the document is unsigned there is no way to

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determine if the document was completed by an acceptable medical source. The relative weight to be given to the opinions expressed cannot be determined.

The medical evidence submitted included a DHS 49-B. On page one of this document, the Claimant indicated that his impairments are neck, left shoulder left wrist, left knee and ankle pain. No date of onset was provided and his treating physician was not identified Department Exhibit, p 3. The medical evidence also includes a DHS 49-F. The information provided indicated that the Claimant was admitted to [REDACTED] in November of 2007, after being hit by a car.

On [REDACTED] completed a DHS 49 Medical Examination Form. [REDACTED] indicated that the Claimant had lumbar radiculopathy and foot and shoulder pain with limited range of motions. [REDACTED] indicated that the Claimant's condition was stable; the Claimant could occasionally lift 10 lbs, could stand or walk at least 2 hours in an eight hour day, could not reach, push, or pull with either hand or arm. [REDACTED] is not a licensed physician. Federal regulations at 20 CFR 416.913(a) provided that medical opinions from licensed chiropractors regarding the existence of an impairment are not acceptable opinions. Medical opinions from licensed chiropractors may be used to establish the severity of an impairment and how it affect the Claimant ability to engage in work but may not be used to establish the existence of an impairment. See 20 CFR 416.913(d) .

The medical evidence provided includes a [REDACTED], a physicians order from [REDACTED] for a MRI. No MRI results or medical opinions regarding any MRI results were provided. Department Exhibit P 14. No additional medical information was provided.

In order for a Claimant to be found disabled at Step 2, the Claimant must present medical evidence from acceptable medical sources, showing that he has a severe impairment or combination of impairments which existed or is expected to last 12 months or more which significantly limit the Claimant's ability to perform basic work

The Claimant presented medical evidence which details a chronic back, shoulder, and ankle pain. No medically determined evidence was provided from an acceptable medical source which shows that the nature and extent of the Claimant's alleged impairments although the Claimant presented evidence of chronic back, shoulder, and ankle pain, the Claimant presented no evidence of the limiting effects of these impairments upon his ability to perform basic work.

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The Claimant failed to provide sufficient evidence to establish the existence of physical and mental impairments which would prevent the Claimant from performing basic work for 12 continuous months or more. The ALJ was correct in making the determination that the Claimant was not eligible for disability at Step 2. The second step of the sequential analysis is a *de minimis* standard. Because the Claimant provided credible medically determined evidence of back shoulder and ankle pain the analysis must necessarily continue to the step 3. Thus, the ALJ properly proceeded from step 2 to step 3.

The Claimant may be found disabled at Step 3 if the Claimant's physical and/or mental impairments meet or equal the requirements of a Social Security listing. The Claimant's alleged back, shoulder, and ankle impairments could meet or equal a listing if the Claimant had provided medically determined evidence which indicated the nature and extent of these alleged impairments the medical evidence presented shows that the Claimant has back shoulder and ankle pain due to injuries sustained in a motor vehicle accident. The name of the health professional, who completed the only medical report which provides specific diagnosed condition, was not provided.

Based on the medical evidence presented the ALJ correctly found that the Claimant's impairments did not meet or equal the requirements of a Social Security Disability listing. The ALJ properly considered the Claimant's eligibility at Step 4.

According to the information on the Claimant's DHS 49-F form and the Hearing Decision, the Claimant was formerly employed as a Load/Shipping dock worker and a cashier at [REDACTED]. The information provided indicates that the Claimant last worked in August 2007, as shipping dock worker. Department exhibit p. 6; *Hearing Decision* p. 2.

On [REDACTED] completed a DHS 49 Medical Examination form. [REDACTED] indicated that the Claimant had lumbar radiculopathy and foot and shoulder pain with limited range of motions. [REDACTED] indicated that the Claimant's condition was stable; the Claimant could occasionally lift 10 lbs, could stand or walk at least 2 hours in an eight hour day, could not reach, push, or pull with either hand or arm. [REDACTED] is not a licensed physician. Federal regulations at 20 CFR 416.913(a) provided that medical opinions from licensed chiropractors regarding the existence of an impairment are not acceptable opinions. Medical opinions from licensed chiropractors may be used to establish the severity of an impairment and how it affect the Claimant ability to engage in work but may not be used to establish the existence of an impairment. See 20 CFR 416.913(d) .

The medical evidence provides includes a [REDACTED], a physician's order from [REDACTED] for a MRI. No MRI results or medical opinions regarding any MRI results were provided. Department Exhibit p 14. No additional medical information was provided.

The evidence presented shows that the Claimant's former work was light work. The Claimant provided no medically determined evidence from an acceptable medical source of his physical impairments. The Claimant failed to provide any additional medical evidence. Based on the medically determined evidence presented, I must conclude that the Claimant did not have any exertional or non-exertional limitations which prevented the Claimant from performing his former light work. Therefore, I find that the ALJ did not err when he found that the Claimant had the residual functional capacity to perform the Claimant's former light work. Despite this finding the ALJ considered the Claimant's disability at Step 5.

At Step 5, the Department has the burden of establishing that despite the Claimant's limitations, he has the Residual Functional Capacity to perform work in the national economy. Residual Functional Capacity is defined as what the Claimant can do despite his limitations. Residual Functional Capacity also includes an assessment of the Claimant's physical and mental abilities. The physical demands of jobs in the national economy are classified as sedentary, light, medium, heavy, or very heavy. The more physically demanding classification includes all less demanding classifications. For example, a classification of very heavy includes all other less physically demanding classifications. Sedentary work is defined as work which involves the lifting or carrying of files, ledgers, small tools, and similar items. Sedentary work presumptively includes sitting but also includes some necessary walking and standing. Light work involves the lifting of no more than 20 pounds at a time and the frequent lifting or carrying of objects weighing less than 10 pounds. Light work may involve significant walking or standing. Absent a loss of dexterity or other limiting factors, typically those who can do light work can do sedentary work. Medium work involves the lifting of objects of 50 pounds or less with frequent lifting or carrying of objects which weigh 25 pounds or less. A person who can do medium work can typically do light and sedentary work. Heavy work involves the lifting of 100 pounds or less with frequent lifting of objects weighing 50 pounds or less. People who can do heavy work can typically do medium, light, and sedentary work. Very heavy work involves the lifting of objects weighing 100 pounds or more and the frequent carrying or lifting of objects weighing 50 pounds or more. A person who can do very heavy work can typically do heavy, medium, light, and sedentary work.

There is not sufficient medically determined evidence that the Claimant's non exertional limitations would prevent him from engaging in substantial gainful employment at the light or sedentary work level. Therefore the ALJ correctly found that the Claimant had the residual functional capacity to perform light and sedentary work.

The evidence presented shows that the Claimant is a 39 year old individual with a high school education and a history of unskilled work. The medically determined evidence presented does not show that the Claimant's physical limitations are so severe that those limitations would prevent the Claimant from performing light or sedentary work. The Claimant failed to provide medically determined evidence which shows that the

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Claimant's exertional limitations prevent the Claimant from engaging in light or sedentary work.

An application of the Claimant's vocational factors to the vocational rules at 20 CFR Pt. 404, Subpt. P, App. rule 201.27 and 202.20 render the Claimant not disabled. The ALJ correctly concluded that the vocational rules render the Claimant not disabled.

Because the Claimant was not found disabled for each of the three months prior to the date of his application, he is ineligible for Retro MA-P. Therefore, the MRT, the SHRT, and the ALJ correctly denied retro MA-P.

The Claimant also applied for State Disability Assistance or SDA in the instant case. That program, which also provides financial assistance to disabled persons, is administered by the Department of Human Services 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). Per PEM 261, a person is disabled for SDA purposes if he/she:

- Receives other specified disability-related benefits or services; or
- Resides in a qualified Special Living Arrangement Facility; or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

In this instance, the Claimant is not receiving any other disability benefits, and lacks the required documentation to be found disabled for SDA purposes. Therefore, the ALJ correctly found that the Claimant was ineligible for SDA.

[REDACTED]
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DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge did not err when she found that the Claimant was not disabled.

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's decision mailed March 27, 2009, is
AFFIRMED.

/s/ _____

Martin D. Snider
Administrative Law Judge
For Michigan Department of Human Services

cc:

[REDACTED]

Date Signed: December 4, 2009
Date Mailed: December 4, 2009

*****Notice*****

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