

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2008-10523
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 17, 2008
Alcona County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on Thursday, April 17, 2008. The claimant personally appeared and testified on his own behalf.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (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 August 14, 2007, the claimant applied for MA-P without filing an application for retroactive MA-P.

(2) On September 28, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P stating that the claimant was denied by the Social Security Administration.

(3) On October 11, 2007, the department caseworker sent the claimant a notice that his application was denied.

(4) On December 10, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On February 19, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is 58 years old with 12 years of education and a work history as a drywaller, carpenter, and construction worker. The claimant alleges disability due to right eye cataract, rotator cuff, and back. Specific and detailed current information is needed for functioning capacity due to the claimant's vocational profile.

MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P is denied. Please obtain a complete independent consultative physical examination (not by the treating physician) in narrative form by an internist and eye examination by an ophthalmologist, best correct acuity and visual fields.

(6) During the hearing on April 17, 2008, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on June 20, 2008 and forwarded to SHRT for review on June 27, 2008.

(7) On July 14, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant is 58 years old with 12 years of education and an unskilled/semi-skilled work history. The claimant is alleging disability due to vision deficit, rotator cuff, and back pain. The claimant did not meet applicable Social Security Listings found in 2.02, 1.03, and 1.04. The claimant has a non-severe impairment/condition per 20 CFR 416.920(c). The objective information received does not significantly affect the residual functional capacity.

(8) The claimant is a 60 year-old man whose date of birth is [REDACTED]. The claimant is 5' 9" tall and weighs 165 pounds. The claimant has a high school diploma with an associate's degree and one year at a four-year institution. The claimant can read and write and do basic math. The claimant was last employed in June 2005 as a carpenter at the light level, which is his pertinent work history. The claimant has also been employed as a residential builder.

(9) The claimant's alleged impairments are right eye cataract, right shoulder rotator cuff tear, and degenerative disc disease.

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 Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since June 2005. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means, the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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 purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant underwent an independent medical evaluation at [REDACTED]. The claimant's chief complaint was back problems, right-sided torn rotator cuff, and gallstones. The independent medical consultant's conclusion was back pain secondary to degenerative disc disease. The claimant was employed at [REDACTED] requiring heavy lifting where he had significant right-sided sciatica, but this condition has tended to diminish in intensity and disappeared entirely when he left work 2 years ago. The claimant's range of motion was modestly impaired in the dorsolumbar spine. Neurological examination, muscle tone, and strength were all unremarkable. The claimant's medication was generally used PRN for pain. The claimant had a right-sided torn rotator cuff. The claimant's range of motion was normal although the right shoulder was painful during its range of motion execution. The neurological examination was normal with normal strength. The claimant has not had surgery for his right-sided torn rotator cuff. The claimant walked with a normal gait without the use of an assistive device. Straight leg raising was accomplished to 80 degrees on the right and 80 degrees on the left. The claimant had a normal physical examination. He was a well-developed, well-nourished male in no obvious distress. The claimant was alert, cooperative in answering questions, following commands, and well-oriented. Affect, dress, and effort were all appropriate. The claimant's immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided good effort during the examination. (Department Exhibit C3-C6)

On [REDACTED], the claimant underwent an eye exam by an ophthalmologist. The claimant had a history of a mature cataract OD with infections in the eyes and a head injury in [REDACTED]. The claimant had had prior ocular infections. The claimant's best corrected for distance in

the right eye was 20/LPO for distance and left eye 20/40+2 and near was 20/20 in both eyes. The correction needed the ophthalmologist was unable to perform due to the dense cataract. The claimant had no visual defect/loss OS. In the right eye, the claimant had a morgagnian cataract. In the left eye he had an early immature cataract. The claimant's extraocular pressure in the right eye was 16 mmHG and in the left eye was 11 mmHG. Treatment recommended was removal of the cataract in the right eye which would be capable of improvement. (Department Exhibit D1-D5)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had severe degenerative osteoarthritis of the lumbosacral spine, esophageal varices, and bilateral rotator cuff tendonitis with a full thickness tear of the right rotator cuff. The claimant had a normal physical examination except that his treating physician noted musculoskeletally that the claimant had limited abduction in both shoulders and giveaway weakness in both shoulders. (Department Exhibit 34)

The treating physician's clinical impression was that the claimant was deteriorating with limitations that were expected to last more than 90 days. The claimant could occasionally lift up to 20 pounds, but not 25 pounds. The claimant could stand and/or walk 2 hours of an 8-hour workday and sit about 6 hours of an 8-hour workday. The claimant could use both hands/arms for simple grasping and fine manipulation, but neither hand/arm for reaching and pushing/pulling. The claimant could neither foot/leg for operation foot/leg controls. The medical findings that support the above physical limitations were limited abduction of both shoulders with a positive impingement sign suggesting rotator cuff tendinopathy. L-S spine x-ray confirmed

severe degenerative osteoarthritis. The claimant had no mental limitations and could meet his needs in the home. (Department Exhibit 33)

On [REDACTED], the claimant underwent an x-ray of the lumbar spine at [REDACTED]. The radiologist's impression was significant osteoarthritic changes of the lumbar spine without any evidence of fractures or subluxations. The claimant had vascular calcifications. There were severe degenerative changes seen of the lumbar spine especially at L1-L2, L2-L3, and L3-L4. (Department Exhibit 22)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant has degenerative osteoarthritis of the lumbosacral spine with bilateral rotator cuff tendonitis as cited by his treating physician on [REDACTED]. The claimant could still occasionally lift 20 pounds and stand and/or walk 2 hours of an 8-hour workday and sit about 6 hours in an 8-hour workday. The claimant's lumbar spine x-ray on [REDACTED] showed severe degenerative changes of the lumbar spine with vascular calcifications. The claimant had a dense cataract that was morgagnian on the right eye with an early immature cataract on the left eye. The claimant was able to see near with both eyes, but had some limitation with distance on [REDACTED]. The claimant underwent an independent medical examination on [REDACTED] that showed degenerative disc disease, but his neurological exam was unremarkable. Range of motion was modestly impaired in the dorsolumbar spine. The claimant had a right-sided torn rotator cuff, but his neurological examination was normal. He did experience pain during the range of motion execution. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant has a driver's license and does drive, but not at night because of his vision. The claimant cooks twice a week. He testified that his vision is off and he has an issue with his balance where he trips over stuff. The claimant grocery shops with his wife 2-3 times a month. The claimant does not clean his own home. The claimant does painting outside his house, cuts the grass, and takes breaks. The claimant does minor repairs on his house such as caulking, painting, and insulating windows. The claimant's hobby is walking. The claimant felt that his condition has stayed the same in the past year. The claimant stated he has no mental impairment.

The claimant wakes up at 8:00 a.m. He watches the news. He has breakfast with his wife. He uses the computer and watches TV. He runs errands with his wife. The claimant talks to family on the phone. He goes to bed at 10:00 p.m.

The claimant felt that he could walk 1/8 of a mile. The longest he felt he could stand was 30 minutes. The longest he felt he could sit was 30-60 minutes. The heaviest weight he felt he could carry and walk was 15-20 pounds. The claimant didn't know what his level of pain was without medication, but it 3/5 with medication.

The claimant smokes a half a pack to a pack of cigarettes a day. The claimant drinks alcohol on the weekends—beer. The claimant hasn't done marijuana since high school. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed as a residential builder and a carpenter. With the claimant's current degenerative disc disease and osteoarthritis he would have a hard time performing medium to heavy lifting. The claimant should be able to do light work. The claimant does have a torn right rotator cuff but as stated by his treating physician he could do fine manipulation and simple grasping, but reaching and pushing/pulling would be difficult for him to perform with his shoulder issues. The claimant also has a dense right eye cataract and an immature forming in his left eye. The claimant does have some right eye vision impairments, but his left eye vision is unimpaired. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as “what can you still do despite your limitations?” 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

The claimant has submitted insufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant’s testimony as to his limitation indicates his limitations are exertional.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, an advanced age individual with a high school education and more, and a skilled and unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.07. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of light activities and that the claimant does not meet the definition of disabled under the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant should be able to perform any level of light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 11, 2010

Date Mailed: February 16, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CGF/vmc

cc:

