

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.: 2008-22266
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 25, 2008
Alpena County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on September 25, 2008.

ISSUE

Was the Department of Human Services' (Department) denial of Claimant's application for MA-P and SDA for lack of disability correct?

FINDINGS OF FACT

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

1. Claimant applied for MA-P and SDA on March 17, 2008.
2. Claimant is 49 years old.
3. Claimant has a high school education and one year of college.
4. Claimant is not currently working.

5. Claimant has a prior work history consisting of a saw mill operator and a sailor.
6. Claimant is obese.
7. On [REDACTED], claimant was admitted to [REDACTED] with complaint of worsening shortness of breath.
8. Cardiac catheterization showed normal coronaries without any stenosis or blockage. Claimant was diagnosed with non-ischemic cardiomyopathy and atrial fibrillation with normal coronary arteries.
9. Echocardiogram showed an ejection fraction of 25-30% for claimant's left ventricle with severe hypokinesis of the left ventricle.
10. On [REDACTED], Claimant underwent surgery to install an Implantable Cardioverter Defibrillator (ICD) and pacemaker as a result of increased risk of ventricular arrhythmias.
11. After surgery, Claimant continued to complain of dyspnea with exertion and decreased exercise tolerance that is chronic and stable.
12. On [REDACTED], a DHS-49, Medical Examination Report, was completed by Claimant's treating source.
13. Claimant's functional capacity was limited and the limitations were not expected to last more than 90 days. Claimant's treating source opined that Claimant should be able to return to work in [REDACTED]. Claimant retains the capacity to lift up to 10 lbs frequently and up to 25 lbs occasionally; however, Claimant should never lift objects weighing 50 lbs or more. Claimant can stand and/or walk less than 2 hours in an 8-hour day. Claimant retains the ability to use all his extremities for repetitive action.

14. On [REDACTED], a Functional Capacity Evaluation was completed by Claimant's treating source.
15. Claimant's functional capacity is limited, and retains the capacity to lift 20 lbs frequently, carry 30 lbs frequently, and retains the capacity to push and pull 59-61 lbs frequently. Claimant can walk occasionally, at least 3 hours in an 8-hour day, stand frequently and sit continuously. Claimant's treating physician stated that Claimant's physical abilities place him in the medium physical job level.
16. On [REDACTED], a DHS-49, Medical Examination Report, was completed by Claimant's treating source.
17. Claimant's functional capacity is limited and only retains the capacity to lift 25 lbs occasionally and no amount of weight frequently, should not stand or walk more than 2 hours in an 8-hour day, retains the capacity for pushing and pulling and operate foot/leg controls, and has a stable condition.
18. On May 14, 2008, the Medical Review Team denied MA-P and SDA.
19. On June 10, 2008, Claimant filed a request for hearing.
20. On July 1, 2008, the State Hearing Review Team denied MA-P, Retro MA-P, and SDA.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial 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).

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 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).

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

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

This is determined by a five-step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five-step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps is necessary. 20 CFR 416.920.

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability.

The Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2008 is \$1,570. For non-blind individuals, the monthly SGA amount for 2008 is \$940.

In the current case, Claimant has testified that he is not working, and the Department has presented no evidence or allegations that Claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that Claimant is not engaging in SGA and, thus, passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "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. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, Claimant has presented medical evidence of cardiomyopathy, hypertension, congestive heart failure, and atrial fibrillation that has decreased his exercise tolerance and causes dyspnea on exertion, according to the great weight of the evidence by Claimant’s treating sources. The Administrative Law Judge finds that this is a significant impairment to Claimant’s performance of basic physical work activities, and is, therefore, enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant’s impairment is listed in this appendix or it is not. However, at this step, a ruling against the claimant does not direct a finding of “not disabled;” if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

After considering the listings contained in Section 4.00 (Cardiovascular System), the Administrative Law Judge finds that Claimant’s medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. A listings disability finding for chronic heart failure requires, among other factors, persistent symptoms of heart failure that very seriously limit the ability to independently engage in activities of daily living, and several separate episodes of acute congestive heart failure within a consecutive 12-month period that

require acute extended physician intervention. None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the above.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is step four, and if not, whether he or she can reasonably be expected to make vocational adjustments to other work, which is step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) The individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of

the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of “sedentary”, “light”, “medium”, “heavy”, and “very heavy” work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at his/her PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant’s RFC on a function-by-function basis, based upon all the relevant evidence of an individual’s ability to do work-related activities. Only at step 5 can we consider the claimant’s exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional nor nonexertional limitations; however, such symptoms can often affect the capacity to perform activities as contemplated above and, thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, it is undisputed that Claimant has exertional limitations as a result of his heart condition. On [REDACTED], Claimant's primary physician completed a DHS-49, Medical Examination Report, and stated that Claimant retains the ability to stand and/or walk less than 2 hours in an 8-hour day. Claimant retains the capacity to lift up to 10 lbs frequently and 25 lbs occasionally. Claimant has no limitations in his ability to use his extremities for repetitive action. Similarly, on [REDACTED], Claimant's cardiologist also completed a DHS-49 and stated that Claimant retains the ability to stand and/or walk less than 2 hours in an 8-hour day. Claimant retains the ability to lift and carry up to 25 lbs occasionally and no amount of weight frequently.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007). The undersigned sees no reason to discount Claimant's treating source opinions. Therefore, the Administrative Law Judge concludes that Claimant has a disabling

impairment when considering the functions of walking and standing. Claimant should avoid climbing. Claimant has few or no postural limitations (e.g., stooping), visual limitations or communicative (hearing, speaking) limitations.

Claimant's PRW includes operating a saw mill and a sailor. These jobs, as typically performed and as described by the Claimant, require lifting heavy objects, such as lumber. They also require a degree of standing and walking. Therefore, given the functional requirements as stated by Claimant (which is consistent with how these jobs are typically performed) for each of those jobs, and Claimant's functional limitations as described above, the Administrative Law Judge concludes that Claimant does not retain the capacity to perform his past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge 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 you 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.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional **and nonexertional functions** required at that level. SSR 96-8p. The individual has the burden of

proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204 et. seq*) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in SGA in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional

capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in SGA) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone. If not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be

contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is forty-nine years old, with a high school education and one year of college education. Claimant has prior work experience performed at the medium and heavy exertional levels. Claimant's exertional impairments likely render Claimant unable to perform work at any exertional level; Claimant only retains the ability to stand and/or walk less than 2 hours in an 8-hour day. While Claimant retains the ability to lift and carry up to 25 lbs occasionally, indicating functional capacity to engage in sedentary to medium work, Claimant's limited ability to stand and walk renders him unable to engage in even sedentary work, which requires the ability to stand and/or walk at least 2 hours in an 8-hour day.

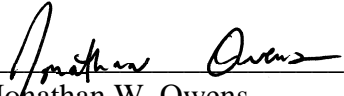
Therefore, after careful review of Claimant's medical records and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 2, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for SGA and that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As Claimant meets the federal standards for SSI disability, as addressed above, and alleges an onset date of March, 2008, the undersigned concludes that Claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is disabled for purposes of the Medical Assistance and State Disability Assistance programs. Therefore, the decision to deny Claimant's application for MA-P and SDA was incorrect. Claimant is found to be disabled as of March 2008.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated March 17, 2008, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. The Department shall set this case for review in July 2011.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 28, 2010

Date Mailed: June 28, 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.

JWO/pf

cc:

