

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: 200927111
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 13, 2009
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 August 13, 2009.

ISSUE

Was the denial of claimant's application for MA-P 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 on October 24, 2008.
- (2) Claimant is 54 years old.
- (3) Claimant has a master's in social work.
- (4) Claimant's degree was attained more than 15 years ago.
- (5) Claimant is not currently working.

- (6) Claimant has no prior work history in the last 15 years.
- (7) Claimant has been diagnosed with fibromyalgia, hepatitis C, chronic fatigue syndrome related to the hepatitis C, anxiety and depression.
- (8) Claimant's fibromyalgia diagnosis was an acceptable diagnosis using accepted diagnostic methods for fibromyalgia.
- (9) Treating sources indicate that claimant can lift less than 10 pounds frequently, has few restrictions on sitting, few restrictions on fine manipulation, and is limited mentally only in sustained concentration.
- (10) This assessment is consistent with the definition of sedentary work.
- (11) On February 11, 2009, the Medical Review Team denied MA-P, stating that claimant was capable of performing past relevant work, though claimant did not have past relevant work.
- (12) On May 12, 2009, claimant filed for hearing.
- (13) On July 1, 2009, SHRT issued a finding that claimant's disability lacked the durational requirement of step 2 of the 5 step process.
- (14) On August 13, 2009, a hearing was held before the Administrative Law Judge. Extensions were granted for the submission of new evidence.

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).

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 are 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 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

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 the 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 more than sufficient evidence of fibromyalgia that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant's treating source and hospital records state that claimant has restrictions in his

functional capacities to do physical activities, including lifting, walking, and standing, and maintaining concentration, persistence, and pace.

Furthermore, while SHRT stated in their decision that there was no objective medical evidence of an impairment, in the light of the unique evidentiary difficulties associated with the diagnosis and treatment of fibromyalgia, opinions that focus solely upon objective evidence are not particularly relevant. *Rogers v. Commissioner*, 486 F. 3d. 234 (6th Cir. 2007). Claimant has presented more than adequate evidence that his condition was diagnosed by an extremely respected medical professional who is trained to diagnose conditions such as claimant's; that the condition was diagnosed in a manner consistent with the medical literature on the subject; and that the condition has been agreed upon by several different treating sources, all well-qualified to make such a diagnosis. Thus, the undersigned is of the opinion that there is sufficient evidence in the case file to hold that claimant suffers from an extremely debilitating condition that has more than a minimal effect on his ability to perform basic work functions.

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.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). In making this determination, the undersigned consulted listing 14.06. Based on the testimony of the claimant, and that of claimant's treating sources, none of the

limitations placed upon the claimant rose to the marked level, a required finding for disability based upon the listing consulted.

We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our 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 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; it is 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 their 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.

However, the facts of the case render a step four determination moot. Claimant’s last date of employment was in 1992, more than 15 years ago. Past relevant work is work that a claimant has done within the past 15 years. 20 CFR 404.1560. Therefore, claimant has no past relevant work and cannot be ruled out for disability at step four.

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 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.

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. This means that they can perform that job in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week. 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 substantial gainful activity 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 substantial gainful activity) 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 fifty-four years old, with a M.A. degree in social work and no prior work experience. Claimant's exertional impairments likely render claimant able to perform work at the sedentary level; claimant has no limitations in sitting, can walk short distances, and while claimant should probably be avoiding lifting heavy objects, he has been cleared to frequently lift weights under 10 pounds. Claimant is to avoid standing for long periods of time. Claimant has few restrictions with fine manipulation.

The Administrative Law Judge finds these restrictions to be consistent with a fibromyalgia diagnosis, and the medical records in the case file show that claimant's exertional

impairments are directly related to this diagnosis. The Administrative Law Judge sees no evidence to support a finding that claimant could perform work at the light exertional level.

Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled is ordinarily warranted. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g)

Therefore, using a combination of claimant's age, education level (which does not provide for direct entry into skilled work), and no previous work experience, a finding of disabled is directed. 20 CFR 404, Subpart P, Appendix 2, Rule 201.12.

As stated above, 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. As we are able to make a determination based solely on exertional limitations, an examination of claimant's nonexertional limitations, such as depression and anxiety, though quite relevant to claimant's overall health, is not required and will not be made here.

However, if the claimant has been determined to be disabled and there is medical evidence of drug addiction or alcoholism, a determination must be made as to whether the drug addiction or alcoholism is a contributing factor material to the determination of disability, unless eligibility for benefits has been found because of age or blindness. 20 CFR 416.935 (a).

The key factor in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether a finding of disability would still be directed if claimant stopped using drugs or alcohol. 20 CFR 416.935 (b) (1).

In making this determination, an evaluation of which of the claimant's current physical and mental limitations, upon which the disability determination was based, would remain if claimant stopped using drugs or alcohol; a determination is then made as to whether any or all of claimant's remaining limitations would be disabling. 20 CFR 416.935 (b) (2).

If it is determined that claimant's remaining limitations would not be disabling, it will be found that claimant's drug addiction or alcoholism is a contributing factor material to the determination of disability.

If it is determined that claimant's remaining limitations are disabling, claimant shall be found to be disabled independent of claimant's drug addiction or alcoholism and the undersigned will find that claimant's drug addiction or alcoholism is not a contributing factor material to the determination of disability.

The undersigned determined disability based upon claimant's fibromyalgia diagnosis. These findings were augmented by claimant's age and remote prior work history. A finding of disability was directed because of these exertional limitations by 20 CFR 404, Subpart P, Appendix 2, Rule 201.12. There is no evidence that claimant's condition was caused by claimant's drug and alcohol abuse problem, and there is no evidence that claimant's condition miraculously improved when claimant stopped his substance abuse years ago.


As these limitations remain, it therefore follows that the Administrative Law Judge's determination of disability would remain unchanged even if the factor of claimant's substance abuse were removed. Therefore, claimant's abuse issue is not a contributing factor material to the determination of disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA program as of October 24, 2008. Therefore, the decision to deny claimant's application for MA-P was incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby,
REVERSED.

The Department is ORDERED to process claimant's MA-P application and award required benefits retroactive to the date of application, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in July, 2011.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/15/10

Date Mailed: 07/20/10

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.

RJC/dj

2009-27111/RJC

cc:

