

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.: 2009-35452
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 27, 2010
Wayne County DHS (58)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Thursday, May 27, 2010. The Claimant appeared, along with [REDACTED], and testified. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") program.

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P and SDA benefits on March 30, 2009.

2. On June 25, 2009, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 5 – 7)
3. On July 2, 2009, the Department sent the Claimant an eligibility notice informing the Claimant that the MA-P and SDA benefits were denied. (Exhibit 1, pp. 2, 3)
4. On July 22, 2009, the Department received the Claimant’s Request for Hearing protesting the determination that he was not disabled. (Exhibit 2)
5. On September 19, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 3)
6. The Claimant’s alleged physical disabling impairments are due to chronic back and shoulder pain, arthritis, vision loss, and high blood pressure.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 44 years old with a [REDACTED] birth date; was 6’ in height; and weighed 258 pounds.
9. The Claimant has a limited education and work history as a general laborer.
10. The Claimant’s impairment(s) has lasted, or is expected to last continuously for a period for 12 months.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Manual (“BRM”).

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(a) 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 recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of

the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial,

gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity therefore the Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a

claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to chronic back and shoulder pain, arthritis, vision loss, and high blood pressure.

On [REDACTED], the Claimant was examined at the eye institute which revealed visual acuity of the right eye of 20/40 and 20/200 in the left. The diagnosis was advanced glaucoma in both eyes.

On [REDACTED], the Claimant was examined at the eye institute. The visual acuity of the right eye was 20/40 while the left eye decreased to hand movement visual acuity. The diagnosis was advanced glaucoma in both eyes.

On [REDACTED], the eye institute established that the Claimant has advanced glaucoma in both eyes with the left being greater than the right; small central island in the right eye and dense central scotoma in the left. The Claimant had hand motion visual acuity in the left eye. The Claimant visual acuity was worse from [REDACTED] likely due to glaucomatous changes.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension and glaucoma. The physical examination revealed back pain. The Claimant was referred to an eye institute for his glaucoma. The Claimant had no physical limitations with the exception of his vision.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension, back pain, GERD, and vision loss. The Claimant's condition was deteriorating and the Claimant was restricted to occasionally lifting/carrying of less than 10 pounds with sitting at least 2 hours during an 8 hour workday.

The Claimant was unable to do prolonged standing and was unable to bend or push due to back pain.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis 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. The Claimant asserts disability due to chronic back and shoulder pain, arthritis, vision loss, and high blood pressure.

Listing 2.00 discusses special senses and speech impairments. Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. 2.00A1 Evidence to establish statutory blindness must show that the visual acuity in the better eye or the visual field in the better eye with the use of corrective lenses is 20/200 or less or that the visual field limitation is such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. 2.00A2

Loss of visual acuity is met when the remaining vision in the better eye after best correction is 20/200 or less. 2.02 Listing 2.03 (contraction of the visual field in the better eye) is met when the widest diameter subtending an angle around the point of fixation no greater than 20

degrees or a mean deviation of -22 or worse (determined by automated static threshold perimetry, or visual field efficiency of 20 percent or less as determined by kinetic perimetry). The loss of visual efficiency is met when the visual efficiency of the better eye is 20 percent or less after best correction. 2.04

In this case, the record establishes that the Claimant has advanced glaucoma in both eyes. The Claimant's left eye visual acuity is less than 20/200 while the Claimant's right eye is at 20/30 (January 2009). Ultimately, it is found that the Claimant's visual impairment may meet a listing within 2.00 as detailed above however the objective findings as of January 2009 do not meet the intent and severity requirement. Accordingly, the Claimant cannot be found disabled or not disabled under this listing.

The record also establishes that the Claimant has hypertension, back pain, and GERD however, outside of the diagnoses, there are no treatment records or other supporting documentation. Accordingly, Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), and 5.00 (digestive system) were considered and found that the evidence does not support a finding of disabled under these listings. Ultimately, the Claimant cannot be found disabled or not disabled at Step 3 thus Step 4 in the sequential analysis is required.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. Id.; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and

whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An

individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history includes employment as a general laborer whose duties included standing, lifting/carrying between 20 and 30 pounds, bending, pushing, pulling, etc. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, medium work.

The Claimant testified that he can lift/carry approximately 10 pounds; can walk with someone for short distances; can sit for less than ½ hour; can stand for short periods of time; and experiences difficulty squatting and/or bending. The Medical Examination Report documents the Claimant's condition as deteriorating and he was restricted to occasionally lifting/carrying of less than 10 pounds with sitting at least 2 hours during an 8 hour workday. The Claimant was unable to do prolonged standing and was unable to bend or push due to back pain. Ultimately, if the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant would not be able to return to past relevant employment therefore Step 5 is necessary.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 44 years old thus considered a younger individual for MA-P purposes. The Claimant has a limited education. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a

vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). In general, age does not seriously affect a younger individual's ability to adjust to other work. 20 CFR 416.963(c) An individual with a high school education or more are generally found to have the educational abilities to perform semi-skilled through skilled work. 20 CFR 416.963(b)(4)

In the record presented, the total impact caused by the combination of medical problems suffered by the Claimant must be considered. In doing so, the Claimant it is found that due to the combination of physical and visual impairments, the Claimant is unable to meet the full range of activities necessary for sedentary work as defined in 20 CFR 416.967(a). After review of the entire, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the Medical Assistance (“MA-P”) program therefore the Claimant’s is found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the March 30, 2009 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant’s continued eligibility in July 2011 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 6/15/2010


Date Mailed: 6/15/2010

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 the Circuit within 30 days of the receipt 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.

CMM/jlg

cc:

A large black rectangular redaction box covers the text in the 'cc:' field. The redaction is composed of several overlapping horizontal bars of varying lengths, creating a solid black block that obscures the names of the recipients.