

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.: 2009-22839
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 31, 2009
Sanilac 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 August 31, 2009.

ISSUE

Was the Department of Human Services' (Department) 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 December 24, 2008.
- (2) Claimant is 32 years old.
- (3) Claimant has a high-school education.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of managing finance and repossession at a car dealership and serving in the U.S. Army.
- (6) In [REDACTED], Claimant was diagnosed with right proximal mid ureteral calculus, or kidney/ureteral stone.
- (7) Claimant underwent ureteroscopy and lithotripsy to remove the calculus.
- (8) On [REDACTED], Claimant was admitted into [REDACTED] with complaints of severe right-sided and centralized pain. The CT scan showed no evidence of residual stones obstructing the flow of fluid in the kidney.
- (9) Claimant underwent an MRI of the lumbar spine, which showed mild disc disease with mild bulging, but no evidence of nerve impingement or central canal stenosis.
- (10) Claimant was prescribed Vicodin for pain management and remained in the hospital. Claimant underwent nerve block treatment and was administered intravenous pain medication, including Dilaudid drip.
- (11) On [REDACTED], Claimant was admitted into [REDACTED] with complaint of right lower quadrant pain. The CT scans of Claimant's kidney showed non obstructing calculus in the lower pole of both kidneys. Claimant was discharged on [REDACTED]. Claimant was diagnosed with peripheral neuropathy.
- (12) On [REDACTED], an independent Department examiner completed a psychological evaluation.
- (13) Claimant was diagnosed with adjustment disorder with depressed mood. The independent Department examiner judged that Claimant has "unimpaired

capabilities to understand, retain, and follow simple instructions and to perform and complete simple tasks”. Claimant is also unimpaired in his “capability to interact appropriately and effectively with co-workers and supervisors and to adapt to changes in the work setting”.

- (14) Claimant received a GAF of 56 with a guarded prognosis.
- (15) On [REDACTED], Claimant’s treating source completed a Medical Source Statement of Ability to do Work-Related Activities (Physical).
- (16) Claimant retains the ability to lift and carry less than 5 lbs occasionally in an 8-hour work day and cannot tolerate carrying and lifting this weight repetitively. Claimant medically requires a hand-held assistive device for ambulation. Claimant is unable to sit continuously, and requires periodic alternation between sitting and standing to relieve pain or discomfort. Claimant is limited in the use of his upper and lower extremities. Claimant should never climb, balance, kneel, crouch, and/or crawl. Claimant should avoid hazards due to limitations in ambulation.
- (17) In a letter dated [REDACTED], Claimant’s treating source states that Claimant is unable to engage in work activity that requires standing with little walking for a 6-hour period, work activity that requires sitting for up to 6 hours per day with 15 minute breaks in the morning and afternoon and a lunch break, and work activities that would require working continuously for 6 hours in an 8-hour work day.
- (18) On [REDACTED], Claimant complained of right testicular pain. No testicular problems were found, and an MRI of the spine showed only mild spondylosis in

the cervical spine and mild disc disease in the lumbar spine with bulging and minimal protrusion. No nerve root impingement was observed. Claimant was discharged on [REDACTED]

- (19) On March 2, 2009, the Medical Review Team denied MA-P.
- (20) On March 30, 2009, claimant filed for a hearing.
- (21) On June 3, 2009, the State Hearing Review Team denied MA-P and Retro MA-P.
- (22) On August 31, 2009, a hearing was held before the Administrative Law Judge.
- (23) After admission of new evidence, Claimant's claim was returned to the State Hearing Review Team for redetermination.
- (24) On March 29, 2010, the State Hearing Review Team denied MA-P and Retro MA-P.

CONCLUSIONS OF LAW

The Medical Assistance (MA-P) 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-P program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) 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 (SGA) 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 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 abdominal and testicular pain that have rendered him unable to ambulate without assistance and unable to stand or sit for extended durations, 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.

The Administrative Law Judge finds that Claimant's medical records do contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned considered listings contained in Section 1.00 (Musculoskeletal System). A listings disability finding for a disorder of the spine requires, among other factors, a finding of nerve root compression with sensory or reflex loss; spinal arachnoiditis; or spinal stenosis. None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the above.

The undersigned also considered listings contained in Section 11.00 (Neurological). A listings disability finding for peripheral neuropathies requires significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms. While Claimant requires an assistive device for ambulation, Claimant has few or no limitations in reaching all directions, including overhead, fine hand manipulations and gross manipulations. Therefore, Claimant does not meet this listing.

Since Claimant cannot be found to be disabled at this step based upon medical evidence alone [20 CFR 416.920(d)], 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 non-exertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and non-exertional 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 non-exertional 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 of 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 non-exertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength and the claimant's ability to perform every day activities, such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Non-exertional 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 non-exertional limitations; however, such symptoms can often affect the capacity to perform activities as contemplated above and, thus, can cause exertional or non-exertional limitations. SSR 96-8.

In the current case, it is undisputed that Claimant has functional limitations. Claimant's treating source completed a Medical Source Statement of Ability to do Work-Related Activities (Physical) on [REDACTED]. Claimant only retains the ability to lift and carry less than 5 lbs occasionally in an 8-hour work day and cannot tolerate repetitive lifting and carrying. Claimant requires an assistive device for ambulation and must periodically alternate between sitting and standing to relieve discomfort or pain. Although Claimant has no manipulative limitations, Claimant is never to engage in any sort of postural activities (e.g., climbing, balancing, kneeling, etc.). Claimant is unable to engage in pushing or pulling that require operation of hand and/or foot controls.

Additionally, claimant alleged during the hearing that he has pain in his lower back, testicles, abdomen, hip, spine, right leg, and periodically in the left leg as well. Claimant testified that he can stand for a few minutes without an assistive device, walk a few hundred feet with a cane, and sit for approximately 20 minutes. Claimant reports numbness in his right foot,

constipation and drowsiness from medication, and struggling with showering and dressing.

Claimant is able to drive and shop, but he requires a mobile cart when shopping. Claimant has no limitations with personal hygiene; however, he is limited in his ability to cook, clean, and do laundry.

From these reports, the Administrative Law Judge concludes that Claimant has a disabling impairment when considering the functions of pushing, pulling, carrying, lifting, and walking. Furthermore, Claimant has difficulties when climbing, balancing, kneeling, crouching, and crawling. Claimant has no limitations in fine and gross manipulation and reaching. Claimant also does not have visual or communicative (hearing, speaking) limitations.

Claimant's PRW includes managing finance and repossession at a car dealership and serving in the U.S. Army. The management position, as typically performed, involves sitting for long periods, occasionally walking, and frequently lifting no more than 10 lbs. Conversely, serving in the U.S. Army requires significant walking, standing, sitting, and lifting or carrying light to heavy objects. Therefore, given the functional requirements that these jobs typically require 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 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 non-exertional functions** required at that level. SSR 96-8p. The individual has the burden of proving that he/she is 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 non-exertional 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 non-exertional 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 non-exertional 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 non-exertional limitations. Furthermore, when there are combinations of non-exertional 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 thirty-two years old, with a high-school education and prior work experience performed at the sedentary, light, medium, and heavy exertional levels. Claimant's exertional impairments likely render Claimant unable to perform work even at the sedentary level; Claimant is only able to lift less than 5 lbs and cannot sit for extended periods. Claimant's treating source states in a letter dated [REDACTED], that Claimant is unable to engage in work activities that require him to sit at a desk for up to six hours per day working with his arms and hands with 15 minute breaks in the morning and afternoon and a lunch break on a sustained bases.


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 the purposes of the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of November 2008.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated December 24, 2008, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant and his authorized representative of the determination in writing. The Department shall set this case for review in December 2010.



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

Date Signed: July 14, 2010

Date Mailed: July 14, 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

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