

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

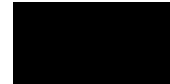


Claimant

Reg. No: 2009-24345

Issue No: 2009

Case No:



Load No:

Hearing Date:

August 11, 2009

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Robert 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 11, 2009.

ISSUE

Was the 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 1-30-09.
- (2) At the time of application, claimant was 54 years old.
- (3) Claimant's birthday is 7-22-54.
- (4) Claimant turned 55 while waiting for a hearing.

(5) On 3-11-09, claimant was issued a denial by the Medical Review Team stating that he was ineligible for disability under Rule 202.14.

(6) Rule 202.14 is applicable for a claimant who is closely approaching advanced age, with a high school education or more, a skilled or semi-skilled work history with skills that are not transferable, and who has a maximum sustained work capability limited to “light work” as a result of a severe medically determinable impairment.

(7) This rule directs a ruling of “not disabled”.

(8) The State Hearing Review Team decision, issued on 6-16-09, also found Rule 202.14 applicable in claimant’s situation.

(9) Claimant has a high school education.

(10) Claimant has a past relevant work history as a truck driver and a carpenter.

(11) These jobs were performed at the light and medium exertional level.

(12) Claimant alleges a neck injury with back and muscle spasms on his right side.

(13) Claimant has is unable to perform any reaching or overhead abilities on his right side.

(14) According to treating sources, claimant is unable to use his right arm in any manner; doing so will set off painful, severe, muscle spasms.

(15) Claimant has no other impairments.

(16) On 3-31-09, claimant requested a hearing.

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 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 a chronic neck injury that has more than a minimal effect on the claimant’s ability to do basic work activities. Claimant’s treating sources all state that claimant has restrictions in his functional capacities to do physical activities, including lifting, simple grasping, reaching, pushing, and pulling. Furthermore, claimant’s treating sources indicate that this problem has been ongoing, and does not contain significant hope for recovery. If claimant uses his right arm in any manner, no matter how trivial, claimant has severe muscle spasms that cause extreme pain. Claimant has no other limitations; however, these limitations are more than the trifling matters to be weeded out under a *de minimus* standard, and are therefore sufficient to pass step 2 of the process. Both MRT and SHRT also felt that claimant had a severe impairment, and no evidence has been submitted that would require a reversal of that finding.

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. A listings disability finding for a disorder of the spine (the closest listing to claimant's complaints) requires, among other factors, a finding of nerve root compression with sensory or reflex loss; spinal arachnoiditis; or spinal stenosis. The listings regulations of 1.04 (Disorders of the Spine) A, B, and C were considered. None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations that meet the indications and requirements of the listings of the above.

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; 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 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 or 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, claimant has been diagnosed with a chronic right shoulder, neck and muscle pain. Medical Report, 2-6-09. Claimant has significant trouble doing any task that involves the use of the right side of his body. Claimant's treating sources have prohibited claimant from doing any sort of reaching, grasping, pulling, or lifting with his right arm, as any use will set off significant muscle spasms. Claimant has no difficulties in walking, sitting, standing, or comprehension. With the exception of his right side, claimant has no other disabling conditions.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering the functions of carrying, lifting, reaching, pushing and pulling, simple grasping and fine manipulation of objects. Claimant cannot climb. Claimant should avoid crawling. Claimant has no visual limitations or communicative (hearing, speaking) limitations.

Claimant has no limitations in comprehending and following simple directions. Any use of his right hand should be avoided.

Claimant has also made allegations of disabling pain. When considering pain, there must be an assessment of whether the claimant's subjective complaints are supported by an objective medical condition which can be expected to cause such complaints. 20 CFR 416.929, *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007). An assessment must be done to consider whether objective medical evidence confirms the severity of the alleged pain or whether the objectively established medical condition is of such a severity that it can reasonably be expected to produce the alleged disabling pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (1986); *Felisky v Bowen*, 28 F3d 213 (6th Cir, 1994). Furthermore, the adjudicator must evaluate the intensity, persistence and limiting effects of the symptoms on the claimant's ability to do basic work activities, i.e. daily activities, location duration, frequency, intensity of symptoms, aggravating and precipitating factors, type, dosage effectiveness, and side effects of any medications, and any other treatment undertaken to relieve symptoms or other measures taken to relieve symptoms such as lying down. *Rogers*.

In this case, medical evidence from claimant's general practitioner, confirms the existence of a condition which can be expected to cause complaints of pain. The specific nature of claimant's injury indicates a condition which can results in extreme pain. Claimant's treating sources confirm claimant's credibility regarding the complaints of pain, and further state that claimant's injury is one as such that may cause pain. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner*, 473 F3d 742 (6th Cir. 2007); restated (again) in *Hensley v. Commissioner*, No. 08-6389 (6th Cir. July 21, 2009). The undersigned sees no reason to discount claimant's treating source opinions.

Therefore, after careful review of claimant's medical record and the Administrative Law Judge's interactions with claimant at the hearing, the documentary evidence in the review packet, the conclusions of the MRT and SHRT, the undersigned finds that claimant's medical condition is of such a severity that it can reasonably be expected to produce claimant's complaints of disabling pain.

The Administrative Law Judge therefore concludes that claimant also has functional limitations resulting from his symptoms that affect his abilities to maintain concentration, persistence and pace. However, it should be noted that the difficulties associated with pain could be reasonably avoided by avoiding use of claimant's right arm.

Claimant's PRW includes truck driving, and carpentry. These jobs as typically performed and as described by the claimant, involve significant use of the right arm. Truck driving requires the usage of the right arm in order to operate a gear shift. Carpentry requires the use of both hands. All of the jobs require lifting heavy objects on occasion. Truck driving requires maintaining concentration, persistence and pace. 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 her past relevant work. Both MRT and SHRT agreed with this assessment, and no evidence has been introduced that would require a different opinion.

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 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).

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 was originally evaluated as an individual closely approaching advanced age (ages 50-54), which led to a finding of not disabled per rule 202.14. However, claimant turned 55 on 7-22-09 and is thus placed into a higher age category. Therefore, two evaluations must be made; first, whether claimant was disabled at the time of the initial application, and; second, whether claimant was disabled at the time of the hearing.

As claimant has offered no evidence or testimony to dispute the findings of MRT or SHRT, and given that claimant's impairment affects only arm movement on the right side of his body, the Administrative Law Judge hold that MRT and SHRT were correct in their initial assessment of the claimant when claimant was ruled capable of light work. Claimant has no trouble grasping, pushing, or pulling with his left side, and furthermore has generally capable lifting capability of that side. The undersigned significantly doubts that claimant could lift the amounts necessary to qualify him for medium work, and thus, feels that a finding of light work is applicable in the current situation. As such, both MRT and SHRT were correct, when ruling that claimant was not disabled at the time of application per vocational rule 202.14.

However, claimant, as stated, entered a different age category as of 7-22-09, and therefore must be evaluated under the second category as well. As no part of claimant's vocational profile has changed except for his age, and claimant is not alleging that he is incapable of light work, the Administrative Law Judge will evaluate claimant under a similar

vocational profile, suitable to claimant's new age. The undersigned has consulted the rules established in Appendix 2 to Subpart P, commonly called "the grid" for guidance as to whether a ruling of disabled is directed.

Rule 202.06 states that for a claimant of advanced age (55 years or older), with a high school education or more, with semi-skilled or skilled work experience, and who retains an RFC for light work, a finding of disabled is directed. This rule is analogous to rule 202.14, with the exception that it is one age category higher.

Therefore, the Administrative Law Judge must hold that claimant meets the medical definition of disability as of 7-22-09.

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 2007, the undersigned concludes that the 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 the claimant is disabled for the purposes of the MA and SDA program as of July 22nd, 2009. The decision to deny claimant's application for MA-P and SDA were correct.

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

The Department is ORDERED to process claimant's MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well, retroactive to an onset date of 7-22-09. Medicaid and SDA are not awarded prior to this date.

The Department is further ORDERED to initiate a review of claimant's disability case in August, 2010.

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

Date Signed: August 19, 2009

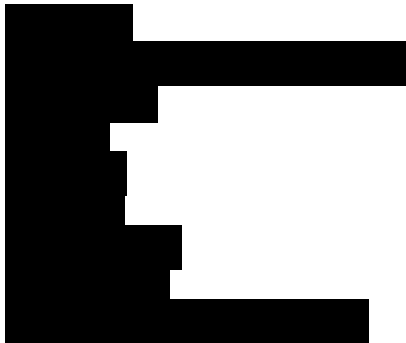
Date Mailed: August 19, 2009

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/cv

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