

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.: 2009-27023
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 10, 2009
Oakland County DHS (4)

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 hearing was held in Pontiac, Michigan on Monday, August 10, 2009. The Claimant appeared, along with [REDACTED] and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The additional evidence was received and entered as Exhibits 6 and 7. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") benefit 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 benefits on November 24, 2008.
2. On January 21, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp. 1, 2)
3. On February 21, 2009, the Department sent an eligibility notice to the Claimant informing him that his MA-P benefits were denied. (Exhibit 1, p. 80)
4. On May 11, 2009, the Department received the Claimant’s Request for Hearing protesting the determination that he was found not disabled.
5. On July 2, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairments are due to chronic back and knee pain, dropped right leg, chest pain, and coronary artery disease status post-stenting.
7. The Claimant’s alleged mental disabling impairment(s) are due to depression and bipolar disorder.
8. At the time of hearing, the Claimant was 50 years old with an [REDACTED] birth date; was 6’ 1” in height; and weighed 200 pounds.
9. The Claimant is a high school graduate with an employment history in home remodeling and bridge construction.

10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 416.929(a) Unless an impairment(s) is expected to result in death, the impairment(s) must have lasted, or must be expected to last, for a continuous period of at least twelve months. 20 CFR 416.909

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 applicants 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) 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) 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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas

(activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As previously stated, the first step looks at the individual's current work activity. The Claimant is not involved in substantial gainful activity thus is not ineligible for disability benefits at 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 asserts physical and mental disabling impairments due to chronic back and knee pain, dropped right leg, chest pain, coronary artery disease status post-stenting, depression, and bipolar disorder. In support, some older records were submitted ([REDACTED] [REDACTED] which documented medial femorotibial joint space narrowing related to mild osteoarthritis and an abnormal EMG of the right lower extremity with a diagnosis of neuropathy.

An EMG study from [REDACTED] of the lower extremities was abnormal for the left S1 and right L5-S1 radiculopathy.

On [REDACTED], the Claimant attended a physical examination due to right leg pain. The examination revealed weakness of the right dorsa flexor with deep tendon reflexes of

1+ symmetrical at all levels in all four extremities. Hyperesthesia of the right foot was documented noting the foot brace and use of a cane. The diagnoses were right cervical peroneal nerve palsy 40% and right knee pain.

On [REDACTED], the Claimant presented for a physical examination. An MRI (02/12/2008) of the right knee confirmed an anterior ligament tear, bone contusion lateral femoral condyle, mild to moderate osteoarthritic changes marked in the medial knee joint with focal osteochondritic erosion along the medial femoral condyle measuring up to 6.00 mm, and small knee joint effusion. The physical examination found hyperesthesia of the right foot noting that the Claimant wears a right foot brace and requires a cane for ambulation. The diagnoses were resolving right common peroneal nerve palsy 40% and right knee pain.

On [REDACTED], the Claimant presented for a physical examination. An MRI of the right knee confirmed an anterior ligament tear, bone contusion lateral femoral condyle, mild to moderate osteoarthritic changes marked in the medial knee joint with focal osteochondritic erosion along the medial femoral condyle measuring up to 6.00 mm, and small knee joint effusion. The physical examination found hyperesthesia of the right foot noting that the Claimant wears a right foot brace and requires a cane for ambulation. The diagnoses were resolving right common peroneal nerve palsy 40% and right knee pain.

On [REDACTED], the Claimant underwent a stress test. The stress and resting myocardial study were abnormal with findings suggestive of ischemia in the anterior wall of the left ventricle. The ejection fraction measured 56% (normal). An echocardiogram was performed which revealed mild concentric left ventricular hypertrophy, mild hypolinesia of the septum and a mild trace of mitral regurgitation and a trace of tricuspid regurgitation suggestive of mild diastolic dysfunction.

On [REDACTED], the Claimant presented to the hospital for a left heart catheterization with intervention and stent implantation without complication. The Claimant was discharged the following day.

On [REDACTED], the Claimant presented to the emergency room with right groin swelling. The Claimant was admitted and on [REDACTED], underwent an incision and drainage of infected right groin hematoma. Exploraton of the right femoral artery was also performed, both without complication.

On [REDACTED], the Claimant presented to the hospital with complaints of chest pain. The Claimant underwent stenting of the left anterior descending artery and of the first diagonal branch without complication. The Claimant was also treated for right groin infection.

On [REDACTED], the Claimant attended a psychiatric evaluation. The diagnoses were recurrent major depression and alcohol/opioid dependence in remission. The Global Assessment Functioning ("GAF") was 48 with the highest over the past year being the same.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were depression, herniated lumbar disc, and hypertension. The Claimant was in stable condition and was able to occasionally lift/carry 26-50 pounds and able to perform repetitive actions with his upper extremities. No further physical and/or mental limitations were noted.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were high choloesterol, myocardial infarction, hypertension, depression, and coronary artery disease status post stents. The Claimant was limited to occasionally lift/carry 20-25 pounds with frequently lifting/carrying of up to 10 pounds; standing and/or walking less than 2 hours during an 8 hour workday; and able to perform simple grasping

and fine manipulation with his upper extremities. The Claimant was unable to reach, push, or pull, with his upper extremities.

On [REDACTED], the Claimant participated in a medication review without any changes noted.

On [REDACTED], the Claimant attended a consultative evaluation. The physical examination revealed a foot drop deformity of the right lower extremity; positive anterior drawer test; mild dysfunction when heel and toe walking; squatting without difficulty; negative straight leg raise bilaterally; full hand grip strength; and no effusion of the right knee. The Claimant was diagnosed with a torn ACL in the right leg with a history of heart attack requiring 4 stents.

On [REDACTED], a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in 1 of the 20 factors relating to his ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The Claimant was moderately limited in 12 of the 20 factors and not significantly limited in the remaining 7 of 20 factors.

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 some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that 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 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 has alleged disabling impairments due to chronic back and knee pain, dropped right leg, chest pain, and coronary artery disease status post-stenting, depression, and bipolar disorder.

Listing 1.00 (musculoskeletal impairments), Listing 4.00 (cardiovascular system), and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. Ultimately, it is found that the Claimant's impairments do not meet the intent and severity requirement of a listed impairment thus he cannot be found disabled, or not disabled at Step 3. Accordingly, Step 4 of the sequential analysis is required. 20 CFR 416.905(a)

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.*

Over the past 15+ years, the Claimant worked in home remodeling and bridge construction. Each position was very physical requiring the Claimant to lift, push, pull, reach, squat, bend, climb, etc. The weight requirements were over 50 pounds. Given these facts, and in

consideration of the Occupational Code, the Claimant's past work history is classified as semi-skilled, medium/heavy work.

The Claimant testified that he can lift/carry approximately 10 pounds; can walk about one block; can sit for extended period provided he elevates his legs; can stand for about 10 minutes; is able to bend but not squat; and experiences difficulty when climbing stairs. 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 is not able to return to past relevant work thus the fifth-step in the sequential evaluation process is required.

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, a high school graduate, was 50 years old thus considered to be closely approaching advanced age for MA-P purposes. Disability is found 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). Transferability of skills is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved. 20 CFR 416.968(d)(2)

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform sedentary work. As noted above, sedentary work involves sitting and lifting no more than 10 pounds at time with occasional walking and standing to carry out the job duties. After review of the entire record, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.14, it is found that the Claimant is disabled for purposes of the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the November 24, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination in accordance with department policy.
3. The Department shall supplement the Claimant any lost benefits he 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 of 2010 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 6/29/2010

Date Mailed: 6/29/2010

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.

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