

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-10741
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 24, 2010
DHS County: Wayne (82-82)

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 Redford, Michigan, on Monday, May 24, 2010. The Claimant appeared by telephone from a nursing home, and testified. [REDACTED] appeared and testified. The Claimant was represented by [REDACTED] [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time frame for the issuance of this decision in order to allow for the submission of additional medical evidence. The records were received, reviewed, and entered as Exhibit 4. 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 the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

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 an application for public assistance seeking MA-P and SDA benefits on July 30, 2009.
2. On August 14, 2009, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. On September 2, 2009, the Department notified the Claimant of the MRT determination.
4. On November 3, 2009, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On December 22, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to back pain, left knee and hip pain, shortness of breath, high blood pressure, irregular heart beat, seizure disorder, strokes, headaches, and dizziness.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 54 years old with a [REDACTED] birth date; was 6'6" in height; and weighed 200 pounds.
9. The Claimant has the equivalent of a high school education with an employment history working in fast food restaurants.
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 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, 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, are 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 3 to Step 4. 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 4 and 5. 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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for 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 back pain, left knee and hip pain, shortness of breath, high blood pressure, irregular heart beat, seizure disorder, strokes, headaches, and dizziness. In support of his claim, medical records from [REDACTED] were submitted which document treatment/diagnoses for/of acute congestive heart failure, non-ischemic cardiomyopathy, ejection fraction ranging from 15 to 50 percent, coronary artery disease, acute kidney disease, alcohol abuse, chest pain, seizure disorder, dehydration, metabolic acidosis, and atrial fibrillation.

On [REDACTED], the Claimant presented to the hospital with atrial flutter and fibrillation with mild rapid ventricular response. Alcohol abuse/intoxication and medication non-compliance were noted. The Claimant was discharged on [REDACTED] in stable condition.

On [REDACTED], the Claimant was admitted to the hospital with chest pain. The Claimant's history of non-ischemic cardiomyopathy, atrial fibrillation, atrial flutter, seizure, ejection fraction of 15 percent, and alcohol and cocaine abuse were noted. Cardiology recommended no further intervention due to medication non-compliance. The Claimant was discharged on [REDACTED] with the diagnoses of atrial flutter, alcohol withdrawal, and history of substance abuse with a positive cocaine test.

On [REDACTED], the Claimant presented the hospital with complaints of intermittent chest discomfort and dyspnea. The Claimant had a positive urine drug screen for cocaine and alcohol. On [REDACTED] the Claimant became "agitated" and pulled out his IV and left the premises against medical advice. The discharge diagnoses were medication non-compliance, paroxysmal atrial flutter with rapid ventricular response, hypertension, hypertensive heart disease, non-ischemic cardiomyopathy with mild left ventricular dysfunction and an ejection fraction of 60 percent, polysubstance abuse including alcohol and cocaine, and nonanginal chest discomfort.

On [REDACTED], the Claimant presented to the hospital with atrial fibrillation with rapid ventricular response. The Claimant was discharged on [REDACTED] with the primary diagnosis of atrial fibrillation with ventricular response secondary to delirium tremens (alcohol abuse), hypertension, right ankle pain, non-ischemic cardiomyopathy, and medication non-compliance.

On [REDACTED], the Claimant was admitted to the hospital due to generalized weakness and chest pain. The Claimant had alcohol intoxication. The Claimant was discharged on [REDACTED] with the diagnosis of atrial fibrillation with rapid ventricular response, non-ischemic cardiomyopathy with ejection fraction of 50 percent, acute renal failure, history of seizure, and alcohol abuse.

On [REDACTED], the Claimant was admitted to the hospital with complaints of fever, increasing pain and swelling of the left lower extremity, and alcohol intoxication. The Claimant was discharged on [REDACTED] with the diagnoses of cellulitis of the left lower extremity, alcohol intoxication, and atrial fibrillation with rapid ventricular response.

On [REDACTED], the Claimant presented to the emergency room after passing out. The discharge summary was not submitted so it is unclear how long the Claimant remained in the hospital but it was at least until [REDACTED].

On [REDACTED], the Claimant presented to the emergency room after falling and passing out with complaints of shortness of breath. The ejection fraction was 15-20 percent. The Claimant was a poor candidate for anticoagulation due to his alcohol abuse and medication non-compliance. The Claimant was discharged on [REDACTED] with the diagnosis of atrial fibrillation with rapid ventricular response secondary to alcohol withdrawal, chronic systolic heart failure, atrial flutter, seizure disorder, hypertension, left foot ulcer, fall, congestive heart failure, cardiac arrhythmia, hyperkalemia, hypomagnesemia, and osteoarthritis.

On [REDACTED] the Claimant was admitted to the hospital with general symptoms secondary to alcohol/substance abuse. The Claimant was discharged to a nursing facility on [REDACTED]. Nursing home progress notes were submitted covering the period from [REDACTED]. During this time, the Claimant was wheelchair bound with the diagnoses of seizure disorder, back pain, atrial fibrillation, alcohol abuse, osteoarthritis, degenerative joint disease, anemia, and cardiomyopathy.

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 medical evidence establishing that he does have some physical 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 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 back pain, left knee and hip pain, shortness of breath, high blood pressure, irregular heart beat, seizure disorder, strokes, headaches, and dizziness.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 11.00 (neurological), and Listing 12.00 (mental

disorders) were considered in light of the objective medical evidence. The Claimant's most recent hospitalizations from [REDACTED] reveal that the Claimant was wheelchair bound; however, previous records indicate that the Claimant was able to ambulate effectively. The records continually note medication non-compliance outside of what is set forth in 20 CFR 416.930 and alcohol and cocaine abuse. The Claimant was a poor candidate for anticoagulation, despite ejection fractions ranging from 15 to 50 percent, due to his alcohol abuse and medication non-compliance. In consideration of the foregoing, it is found that the Claimant is not disabled at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 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 are 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 is made. *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 are 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 functioning 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 (e.g. 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 consists of employment in fast food restaurants. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, light work.

The Claimant is, at this point, unable to ambulate; can lift/carry 5 to 10 pounds; sit for short periods of time; and experiences difficulty bending and/or squatting. 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 analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience are 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 54 years old and was, therefore, considered to be closely approaching advanced age for MA-P purposes. The Claimant has the equivalent of a high school education. 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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

In this case, the evidence reveals that the Claimant suffers from back pain, left knee and hip pain, shortness of breath, high blood pressure, irregular heart beat, seizure disorder, strokes, headaches, and dizziness. The Claimant's alcohol abuse is a contributing factor material to the determination of disability as set forth in 20 CFR 416.935. That being stated, it is found that the Claimant's impairments would remain independent of the abuse. Further, at the time of hearing, the Claimant was in a substance abuse treatment program where he remained on an in-patient basis until July 2010. In consideration of the foregoing, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.12, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The SDA program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department 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 automatically qualifies an individual as disabled for purposes of the SDA program.

In some circumstances, benefit payments can, or must, be restricted to someone other than the individual (program group). BAM 420. A protective payee is a person/agency selected to be responsible for receiving and managing the cash assistance on behalf of the individual (program group) as a third party. *Id.* Restricted payments are required in any of the following circumstances:

- Court-ordered shelter arrearage collection
- Third-party resource disqualification
- Minor parent
- Substance Abuse
- Client convicted of a drug-related felony
- Money mismanagement
- A child(ren) receiving FIP has a legal guardian
- Eviction or threatened eviction

Id. Restricted payment status is reviewed when appropriate but at least at every determination. *Id.* The client has the right to request and be granted a review of the restricted payment status every six months. *Id.* An individual (group) may request a hearing to dispute a decision to begin or continue restricted payments or dispute the selection of a protected payee. *Id.* Restricted payments are continued until the hearing matter is resolved. *Id.*

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, the Claimant is found disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the July 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, in light of the Claimant's history of alcohol abuse, evaluate the need for a protective payee in accordance with Department policy.

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4. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review the Claimant's continued eligibility in September 2011 in accordance with Department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 15, 2011

Date Mailed: March 17, 2011

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.

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