

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.: 2010-17376
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 11, 2010
Macomb County DHS (12)

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 Clinton Township, Michigan on Thursday, March 11, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") 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 a public assistance application seeking MA-P and SDA benefits on August 5, 2009. (Exhibit 2, pp. 7 – 22)

2. On October 7, 2009, the Medical Review Team (“MRT”) found the Claimant not disabled for purposes of the MA-P and SDA programs. (Exhibit 1, pp. 67, 68)
3. On October 14, 2009, the Department sent a Notice of Case Action to the Claimant informing him that he had been found not disabled. (Exhibit 2, pp. 1 – 6)
4. On January 12, 2009, the Department received the Claimant’s timely written Request for Hearing protesting the disability determination. (Exhibit 2, p. 25)
5. On February 10, 2010, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 4)
6. The Claimant’s alleged physical disabling impairments are due to right side paralysis/numbness, torn rotator cuff, severe atrophy, chronic obstructive pulmonary disease (“COPD”), asthma, emphysema, myocardial infarction post surgery, congestive heart failure, atherosclerotic heart disease, alcoholic cirrhosis, acid reflux disease, and cerebral vascular accident with left eye vision loss.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 53 years old with a [REDACTED] birth date; was 5’ 9” in height; and weighed 140 pounds.
9. The Claimant is a high school graduate with an employment history working with sheet metal.
10. The Claimant’s impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of

Human Services (“DHS”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Program Glossary (“BPG”).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the 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 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 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 therefore is not ineligible for MA-P 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 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 based on right side paralysis/numbness, torn rotator cuff, severe atrophy, chronic obstructive pulmonary disease ("COPD"), asthma, emphysema, myocardial infarction posting surgery, congestive heart failure, atherosclerotic heart disease, alcoholic cirrhosis, acid reflux disease, and cerebral vascular accident with left eye vision loss. In support of this claim, follow-up medical records were submitted which cover the period from [REDACTED] through [REDACTED] and show treatment, in part, for depression, chronic pancreatitis, cirrhosis, COPD, atherosclerotic heart disease, and gastritis.

On [REDACTED] the primay care physician authored a letter noting the Claimant's medical history of chronic pancreatitis, alcoholic cirrhosis, Barrett's esophagus, COPD, atherosclerotic heart disease, ("ASHD"), anxiety, right shoulder osteoarthritis/capsulitis and opiate dependence. The Claimant had several "recent" hospitalizations due acute pancreatitis and had lost 25 pounds since [REDACTED]. The Claimant's health was "poor" and his long term prognosis was not favorable.

On [REDACTED], the Claimant was admitted to the hospital with complaints of acute abdominal pain. The CAT scan of the abdomen and pelvis were consistent with acute pancreatitis with no signs of a mass. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of acutre abdominal pain, coronary artery disease, myocardial infarction, Barrett's esophagitis, COPD, nephrolithiasis, leukocytosis, cirrhosis, and alcohol (in remission)/tobacco abuse.

On [REDACTED], the Claimant was admitted to the emergency room after falling from his bicycle. The admitting diagnoses were multiple system trauma, closed head injury, facial abrasions, and confusion. The Claimant tested positive for benzodiazepines and opiates. The Claimant was discharged the following day.

On [REDACTED] the Claimant presented to the hospital with aphagia and confusion. A MRI confirmed an acute ischemic infarct in the left frontal temporoparietal region and left basal ganglion. A carotid Doppler study was completed which revealed 80-99 percent critical stenosis of the left internal carotid and more than 39 percent on the right; mild-to-moderate atheromatous occlusive disease; and narrowed calibered right internal and external carotid arteries without significant occlusion. The Claimant was discharged on July 12, 2009 with the diagnoses of multisystem trauma, left frontal and posterior parietal infarct, ETOH abuse, cirrhosis, and history of pancreatitis.

On [REDACTED], the Claimant attended a follow-up appointment with complaints of right hand numbness, left eye haziness, and chronic nausea and vomiting secondary to pancreatitis. The Claimant was instructed to follow-up with a neurologist, his primary care physician, and with Vascular Surgery Clinic.

On [REDACTED], the Claimant attended a consultative examination. The Claimant was found to have vision disturbance due to his stroke, headaches, tobacco use disorder, carpal tunnel syndrome, and carotid artery stenosis/ occlusion with cerebral infarction.

On [REDACTED], the primary care physician authored a letter noting treatment for chronic pancreatitis (with several recent hospitalizations), alcoholic cirrhosis, Barrett's esophagus, COPD, atherosclerotic heart disease (ASHD), anxiety, right shoulder osteoarthritis/capsulitis, and opiate dependence. Further, in [REDACTED], the Claimant suffered a

stroke that affected his vision and left him with right upper extremity weakness. His general state of health was poor and his long term prognosis was poor.

On [REDACTED], a Physical Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found able to occasionally lift and/or carry 20 pounds with frequent lifting/carrying of 10 pounds; stand and/or walk about 6 hours in an 8-hour work day with sitting about 6 hours during this same time frame; and able to perform pushing and/or pulling including the operation of hand and/or foot controls.

On [REDACTED], the Claimant attended a psychiatric evaluation. The Claimant was diagnosed with alcohol abuse in early remission, opiate dependence, and adjustment reaction with disturbance of mood. The Global Assessment Functioning (“GAF”) was 55 and his prognosis was guarded.

On [REDACTED], the Claimant participated in a consultative psychiatric evaluation. The Claimant was diagnosed with adjustment disorder (non-severe), opiate dependence, and ETOH abuse (in remission). The Claimant had no markedly limited functional limitations. The Claimant’s confusion was not to the degree which would support a finding of a severe impairment.

On [REDACTED], the treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were COPD, chronic pancreatitis, severe right shoulder atrophy, CVA with left eye vision loss. The Claimant’s condition was deteriorating and he was restricted to occasionally lifting/carrying of less than 10 pounds; standing and/or walking less than 2 hours during an 8 hour workday with sitting at about 6 hours during this same time. The Claimant was able to perform simple grasping with both hands/arms but was unable to

perform other repetitive actions with his right upper extremity. The Claimant's shoulder pain/atrophy limited his ability to reach, push, pull.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have physical and mental limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted 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 disabling impairments due to right side paralysis/numbness, torn rotator cuff, severe atrophy, chronic obstructive pulmonary disease ("COPD"), asthma, emphysema, myocardial infarction post-surgery, congestive heart failure, atherosclerotic heart disease, alcoholic cirrhosis, acid reflux disease, and cerebral vascular accident with left eye vision loss.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special systems and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 11.00 (neurological), Listing 12.00 (mental disorders), and Listing 14.00 (immune system disorders) were considered in light of the objective medical records and durational requirements. Ultimately it is found that the Claimant cannot be found disabled or not disabled within a listing therefore 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 is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of

sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling,

stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history includes employment working in sheet metal whose primary responsibilities included standing, lifting/carrying up to 100 pounds, cutting steel, bending, reaching, pulling, and grasping. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled, heavy work.

The Claimant testified that he experiences difficulty lifting/carrying any weight with his right hand but could possibly lift/carry 20 pounds with his left; can stand for 10 minutes; can walk short distances; and is unable to fully squat but is able to bend. The Claimant's primary physician restricted the Claimant from lifting/carrying of less than 10 pounds; standing and/or walking at less than 2 hours during an 8 hour workday with sitting at about 6 hours during this same time. Further, the Claimant was found unable to perform repetitive actions except for simple grasping with his right upper extremity. 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 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 53 years old thus considered to be closely approaching advanced age for MA-P purposes. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, the total impact caused by the combination of medical problems suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical and mental impairments have a major impact on his ability to perform basic work activities. The Claimant is however found able to perform the full range of activities for sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and in consideration of the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II], specifically 201.14, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

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

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

Accordingly, it is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the August 5, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination in accordance with department policy.
3. The Department shall, in light of the Claimant’s history of substance abuse, evaluate the need for a protective payee in accordance with department policy.
4. The Department shall supplement for any lost benefits 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 accordance department policy in April 2011.

Colleen M. Mamelka

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

Date Signed: 3/30/2010

Date Mailed: 3/30/2010

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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