

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

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 2010-18289
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: May 10, 2010
Wayne County DHS (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 telephone hearing was conducted from Detroit, Michigan on Monday, May 10, 2010. The Claimant appeared and testified. [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 records. The new evidence was received, reviewed, and entered as Exhibit 5. 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 upon 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 November 4, 2009.
2. On December 9, 2009, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 9, 10)

3. On December 14, 2009, the Department notified the Claimant of the MRT determination.
4. On January 26, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On February 25, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to left knee/shoulder, and ankle pain, chronic asthma, and closed head injury.
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 5'10" in height; and weighed 215 pounds.
9. The Claimant has the equivalent of a high school education with a work history in telemarketing, stocking, and as a supervisor/nursing assistant.
10. The Claimant's impairment(s) 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 416.927

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 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 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 left knee/ankle, and shoulder pain, chronic asthma, and closed head injury. In support of his claim, some older medical records from as early as 2001 were submitted which document treatment for chronic knee pain, asthma exacerbation (several treatments), upper respiratory infection, abdominal wall and thigh abscess, severe degenerative changes of the left

shoulder, scrotal abscess/mass, left gluteal abscess, hypertension, left wrist abscess, Buccal abscess, facial cellulitis, and a submental abscess.

On [REDACTED], the Claimant received emergency room treatment for acute asthma exacerbation and penile discharge.

On [REDACTED], the Claimant was admitted to the hospital with asthma exacerbation. The Claimant was given breathing treatments and antibiotics. The Claimant was discharged the following day with the diagnoses of asthma exacerbation, acute bronchospasm, microcytosis, acute renal failure, and hypertension.

On [REDACTED], the Claimant presented to the hospital with complaints of shortness of breath. The Claimant was given antibiotics and breathing treatments and was discharged with the diagnosis of acute asthma exacerbation.

On [REDACTED], the Claimant was admitted to the hospital with complaints of chest pain. The Claimant was treated and discharged on [REDACTED] with the diagnoses of chest pain.

On [REDACTED], the Claimant presented to the emergency room with complaints of shortness of breath. The Claimant was given antibiotics and breathing treatments. The Claimant was discharged the same date with the diagnoses of acute asthma exacerbation and penile lesion (possible syphilis).

On [REDACTED], the Claimant sought emergency room treatment for this asthma. The Claimant was given breathing treatments and antibiotics and subsequently discharged with diagnosis of acute asthma exacerbation.

On [REDACTED], the Claimant presented to the hospital with complaints of breathing difficulties. The Claimant was given breathing treatments and steroid antibiotics. The Claimant was subsequently discharged.

On or about [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were asthma, joint pain, and history of closed head injury. The Claimant's condition was deteriorating and he was limited to frequently lifting/carry of 10 pounds with the occasional lifting/carrying up to 50 pounds; stand and/or walk less than 2 hours in an 8 hour work day; sit less than 6 hours during this same time frame; and able to perform simple grasping and fine manipulation with both upper extremities and able to push/pull/reach with his left upper extremity only. The Claimant was found able to operate foot/leg controls with his right lower extremity only.

On [REDACTED], an x-ray revealed severe degenerative changes of the left shoulder with an old "Bankart" fracture. The Claimant was treated and discharged the

same day with the diagnoses of mild asthma exacerbation and severe degenerative changes of the left shoulder.

On [REDACTED], the Claimant was prescribed a battery powered nebulizer.

On [REDACTED], the Claimant attended a consultative evaluation. The Claimant's asthma and respiratory problems were "quite visible" during the examination. Stiffness in the Claimant's left shoulder and knee were documented. The Internist opined that the Claimant suffers from significant medical problems which may impact his ability to work.

On [REDACTED], a Pulmonary Function Test was performed. The Claimant's Forced Expiratory Volume at 1 ("FEV₁") of 1.93, 1.85, and 2.06 and the Forced Vital Capacity ("FVC") was 2.7, 3.31, and 3.31. Ten minutes after the bronchodilator the FEV₁ was 2.10, 2.03, 1.96 and the FVC was 3.26, 3.17, and 3.14. During the test, the Claimant's shortness of breath was documented.

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 has alleged physical disabling impairments due to left knee/ankle and shoulder pain, chronic asthma, and closed head injury.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 8.00 (skin disorders), and Listing 11.00 (neurological) were considered in light of the objective evidence. There was no evidence of a nerve root compression, spinal arachnoiditis, or lumbar spinal stenosis or evidence showing the inability to ambulate effectively or major joint dysfunction bilaterally necessary to meet a listed impairment within Listing 1.00. With regards to Listing 3.00, the evidence shows several treatments for acute asthma exacerbation. The PFT revealed FEV₁ of 1.93, 1.85, and 2.06 and the FVC of 2.7, 3.31, and 3.31. Ten minutes after the bronchodilator the FEV₁ was 2.10, 2.03, 1.96 and the FVC was 3.26, 3.17, and 3.14. These numbers are above 1.55 (based on the Claimant's height of 5'10") which are required to meet a listed impairment within 3.00. Ultimately, based on the medical

evidence alone, the Claimant's impairment(s) do not meet a listing therefore the Claimant cannot be found disabled or 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 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 work history includes employment in telemarketing, stocking, and as a supervisor/nursing assistant. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work in telemarketing is classified as unskilled sedentary; the stocking position is considered unskilled light work; and the supervisor/nursing assistant is classified as semi-skilled light to medium work.

The Claimant testified that he can lift/carry about 10 pounds; can walk about ¼ mile but with shortness of breath; can sit for extended periods; stand for about 15 minutes; and is able to bend but experiences pain when squatting. The objective medical records indicate that the Claimant's condition is deteriorating and limits him to frequent lifting/carrying of 10 pounds with the occasional lifting/carrying of more; standing and/or walking less than 2 hours in an 8 hour work day with sitting at less than 6 hours. If the impairment or combination of impairments does not limit an individual's 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 may not be able to return to past relevant employment. Accordingly, the Claimant's eligibility at Step 5 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

was 54 years old thus 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 closely approaching advanced age (age 50-54) and limited work experience may seriously impact the ability to adjust to other work. 20 CFR 416.963(d)

In this case, the evidence reveals that the Claimant suffers with severe chronic asthma as well as severe degenerative changes in the left shoulder. In 2009, the Claimant had eight emergency room treatments due his breathing difficulty. The objective medical records place the Claimant to the equivalent of less than sedentary activity. In light of the foregoing, it is found that due to the Claimant's severe impairments, he is unable to meet the physical and mental demands required to perform unskilled sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, the Claimant is found disabled at Step 5.

The State Disability Assistance 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 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 this case, the Claimant is found disabled for purposes of the MA-P benefit 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 MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the November 4, 2009 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 for any lost benefits (if any) that the Claimant 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 January 2012 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Duane Berger, Director
Department of Human Services

Date Signed: 1/06/2011

Date Mailed: 1/06/2011

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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cc:

