

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.: 2010-44115
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 23, 2010
Wayne County DHS (43)

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 Highland Park, Michigan on August 23, 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 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 December 28, 2009.
2. On January 12, 2010, the Medical Review Team ("MRT") deferred the disability determination requesting additional medical evidence. (Exhibit 1, p. 1)
3. On April 8, 2010, the MRT found the Claimant not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, pp. 1, 2)

4. The Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled.
5. On July 7, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
6. On July 29, 2010, the State Hearing Review Team ("SHRT") determined that the Claimant was not disabled. (Exhibit 3)
7. The Claimant's alleged physical disabling impairment(s) are due to a pituitary tumor status post surgery, right eye blindness, left eye vision loss, diabetes insipidus, headaches, and fatigue.
8. The Claimant has not alleged any mental disabling impairment(s).
9. At the time of hearing, the Claimant was 42 years old with an [REDACTED] birth date; was 5'6" in height; and weighed 245 pounds.
10. The Claimant has a GED with an employment history as a general laborer.
11. 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"), formally 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) 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)

In the record presented, the Claimant is not involved in substantial gainful activity therefore the Claimant is not disqualified from receipt of 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 pituitary tumor status post surgery, right eye blindness, left eye vision loss, diabetes insipidus, headaches, and fatigue.

On [REDACTED], the Claimant presented to the hospital with complaints of double vision. An MRI revealed a sellar mass. The Claimant was discharged the following day with the diagnosis of pituitary tumor.

On [REDACTED], the Claimant presented to the hospital with complaints of worsening visual loss to include peripheral vision. The Claimant was discharged the following day with the plan to undergo a transsphenoidal hypophysectomy.

On [REDACTED], the Claimant was admitted to the hospital to undergo a transsphenoidal hypophysectomy. The procedure was performed without complication. The Claimant's left eye was reactive with full extraocular movement and a decrease in the visual field. The Claimant was discharged on [REDACTED] with the diagnoses of visual deficit and pituitary tumor.

On [REDACTED], the Claimant attended a consultative evaluation. The Claimant's right eye blindness was noted. A left beating nystagmus was in both eyes. The Claimant was diagnosed with diabetes, blindness in right eye, and left eye visual disturbance. The Claimant's chronic headaches were also documented. The physician opined that the Claimant does have limited vision and needs continuing eye care. His vision was 20/30 in the left eye.

On [REDACTED], the Claimant presented to the hospital to undergo a right frontal craniectomy and excision of the suprasellar cyst. On [REDACTED], an eye exam was performed. The left eye had optic neuropathy with glaucoma suspected. Possible atrophy was also documented. The Claimant also had ocular hypertension. The right eye had low vision due to congenital abnormalities. The Claimant was discharged on [REDACTED] with the diagnoses of pituitary lesion, blindness, and diabetes insipidus. The Claimant was restricted to pushing, pulling, or lifting less than 10 pounds; no bending; and walking as tolerated.

The Claimant was recommended to undergo laser treatment on his eye.

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 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, or are 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 asserts disability due to chronic back and shoulder pain, arthritis, vision loss, and high blood pressure.

Listing 2.00 discusses special senses and speech impairments. Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. 2.00A1 Evidence to establish statutory blindness must show that the visual acuity in the better eye or the visual field in the better eye with the use of corrective lenses is 20/200 or less or that the visual field limitation is such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. 2.00A2

Loss of visual acuity is met when the remaining vision in the better eye after best correction is 20/200 or less. 2.02 Listing 2.03 (contraction of the visual field in the better eye) is met when the widest diameter subtending an angle around the point of fixation no greater than 20 degrees or a mean deviation of -22 or worse (determined by automated static threshold perimetry, or visual field efficiency of 20 percent or less as determined by kinetic perimetry. The loss of visual efficiency is met when the visual efficiency of the better eye is 20 percent or less after best correction. 2.04

In this case, the record establishes that the Claimant is blind in his right eye and has a loss of vision in his left. In March 2010, prior to the craniotomy, the Claimant's left eye vision was 20/35. The Claimant was referred for laser surgery and has left eye had optic neuropathy with glaucoma suspected. The Claimant also has visual loss to include peripheral vision. Ultimately, it is found that the Claimant's visual impairment meets, or is the medical equivalent thereof, a listed impairment within 2.00. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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 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 (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 SDA benefits.

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 program and the State Disability Assistance program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the December 28, 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 supplement for any lost benefits 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 September 2011 in accordance with department policy

Colleen M. Mamelka

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

Date Signed: 8/25/2010

Date Mailed: 8/25/2010

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 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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