

**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.: 2010-10074
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: February 18, 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 conducted from Clinton Township, Michigan on Thursday, February 18, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On March 16, 2010, the SHRT found the Claimant not disabled based on insufficient evidence. The SHRT requested an independent consultative examination. On March 22, 2010, the undersigned issued an interim order to the department requesting the consultative examination. On June 15, 2010, the Claimant attended the consultative examination. On June 28, 2010, the new evidence was received, reviewed, and forwarded to the SHRT for consideration. On July 8, 2010, the SHRT found the Claimant not disabled. This matter is now before the undersigned for a final determination.

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 upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On June 10, 2009, the Claimant submitted an application for public assistance seeking MA-P and SDA benefits.
2. On September 9, 2009, the Medical Review Team ("MRT") deferred the disability determination requesting a consultative examination. (Exhibit 1, pp. 57 – 29)
3. On September 25, 2009, the Claimant attended the consultative evaluation. (Exhibit 1, pp. 60 – 62)
4. On October 16, 2009, the MRT determined the Claimant was not disabled finding the Claimant capable of performing past relevant work for MA-p purposes and finding the Claimant's impairment would not prevent employment of 90 days or more for SDA purposes.
5. On October 27, 2009, the Department sent the Claimant an eligibility notice informing him that the MA-P and SDA benefits were denied. (Exhibit 3)
6. On November 9, 2009, the Department received the Claimant's written hearing request protesting the denial of benefits. (Exhibit 2)
7. On December 21, 2009, March 16, 2010, and June 8, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)
8. The Claimant's alleged physical disabling impairments are due to leg pain and diabetes complications which include toe amputations and subsequent infection.
9. The Claimant has not alleged any mental disabling impairment(s).
10. At the time of hearing, the Claimant was 62 years old with a [REDACTED] birth date; was 5' 7" in height; and weighed 150 pounds.
11. The Claimant is a high school graduate with some college and an employment history as a supervisor at a steel company with a short stint working in a factory.

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 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 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 leg pain and diabetes complications which include toe amputations and subsequent infection.

On [REDACTED], the Claimant presented to the hospital with poorly controlled diabetes mellitus and left foot ulcer. Ultimately, the Claimant's left second toe was amputated. The Claimant was discharged on [REDACTED] with the diagnoses of cellulites of the lower extremity; gangrene of the second toe with infection resulting in amputation; diabetes mellitus; hypertension; and mild peripheral vascular disease.

On [REDACTED], the Claimant attended a follow-up appointment for his left foot infection and nonhealing wound, status post amputation. The Claimant was transferred to another facility due to his need for incision and drainage with application of a wound VAC. The procedure was performed without complication.

On [REDACTED], the Claimant attended a consultative examination. The Claimant was diagnosed with diabetes mellitus which was well controlled under his present regime. There was no evidence of diabetic retinopathy, nephropathy, or neuropathy. The Claimant's did not have any functional limitations orthopedically due to his left second toe amputation ([REDACTED]). Further, the Claimant's hypertension was controlled with his present regime with no evidence of cardiomegaly or cardiac failure.

On [REDACTED], the Claimant presented to the hospital with foot pain and left foot ulcer with cellulitis. The third metatarsal was amputated. The Claimant was discharged on [REDACTED] with diagnoses of diabetes with foot infection and osteomyelitis status toe amputation and excisional debridement, diabetes, and hyponatremia. The Claimant's activities were unrestricted.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The Claimant was in stable condition but limited to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday; sit less than 6 hours during an 8 hour workday; and able to perform reaching, pushing, and pulling with his upper extremities. The Claimant was unable to perform simple grasping and fine manipulation with his upper extremities and was unable to operate foot/leg controls.

On [REDACTED], the Claimant attended a consultative examination. The physical examination found the Claimant able to walk unassisted noting a slight limp on the left. The Claimant was able to tandem walk, heel and toe walk (albeit slowly), and squat/bend 60%. Grip strength was equal bilaterally. Abduction of the shoulders was 0-150 and flexion of the knees was 0-150. Straight leg raising while lying was 0-50 and while sitting, 0-90. The Claimant was diagnosed with diabetes neuropathy, diabetic retinopathy, chronic fatigue, and possible peripheral vascular disease. The Claimant needs surgery for his diabetic retinopathy. The Medical Examination Report was also completed finding the Claimant's condition as stable. The Claimant was able to occasionally lift/carry 20 pounds; stand and/or walk about 6 hours during an 8 hour workday; sit about six hours in an 8 hour workday; and able to perform repetitive actions with his upper extremities. The Claimant was unable to operate leg/foot controls.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted 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 pain and diabetes complications which include toe amputations and infection.

Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

- A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
- C. *Retinitis proliferans*; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations establish a neurological impairment. 11.00C The degree of interference with locomotion and/or interference with the use of fingers, hands, and arms are considered. *Id.* 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 A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or to perceive visual stimuli in the peripheral extent of vision. *Id.* The loss of visual acuity is met when vision in the better eye after best correction is 20/200 or less. 2.02 Similarly, the loss of visual efficiency is established when the better eye of 20% or less after best correction.

In the record presented, medical records document the Claimant's diabetes mellitus. Despite two toe amputations, the records do not establish significant and persistent disorganization of motor function in two extremities, acidosis, or visual impairment with respect to the intent and severity requirement(s). Ultimately, the record does not support a finding of disabled under this Listing.

The objective evidence documents treatment for leg/foot pain, hypertension and mild peripheral vascular disease. Listing 1.00 (musculoskeletal system) and Listing 4.00 (cardiovascular system) were considered. Ultimately, it is found that the Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment within Listing 1.00 and/or 4.00 thus the Claimant cannot be found disabled, or not disabled, under these listings. 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 prior work history includes employment as a supervisor at a steel company and a short stint selling car parts. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work as a supervisor is classified as semi-skilled, light/medium work while his employment selling car parts is semi-skilled, light work.

The Claimant testified that he can lift/carry 10 pounds; can stand for approximately 10-15 minutes; can walk a couple of blocks; can sit for about an hour; and is able to squat and bend but experiences some difficulty. The most recent medical evaluation restricts the Claimant to occasionally lifting/carrying of 20 pounds; standing and/or walking about 6 hours during an 8 hour workday; and sitting about six hours in an 8 hour workday. The Claimant is unable to operate foot/leg controls but is able to perform repetitive actions with his upper extremities. 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 may not be 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 with some college, was 62 years old thus considered to be of advanced age for MA-P purposes. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform sedentary work as defined by 20 CFR 416.967(a). After review of the entire record, finding no contradiction in the Claimant's nonexertional limitations, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.07, it is found that the Claimant is not disabled for purposes of the MA-P program.

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 not disabled for purposes of the Medical Assistance (“MA-P”) program, therefore the Claimant’s is found not disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance and State Disability Assistance benefit programs.

It is ORDERED:

The Department’s determination is AFFIRMED.

Colleen M. Mamelka

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

Date Signed: 07/14/2010

Date Mailed: 07/14/2010

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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