

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.: 201010571

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

March 17, 2010

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by in person hearing pursuant to MCL 400.9 and MCL 400.37 on March 17, 2010 upon the Claimant's request for hearing received by the Department. At the hearing, the Claimant was present and testified along with his wife, [REDACTED]. [REDACTED] FIM, 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") and State Disability Assistance ("SDA") 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. Claimant filed for MA and SDA on 6/17/09.
2. Claimant is 6'4" tall and weighs 185 pounds.
3. Claimant is right handed.

4. Claimant is 53 years of age.
5. Claimant's impairments have been medically diagnosed as Chronic Bilateral Shoulder Pain with Bilateral Shoulder Internal Derangement, previous left big toe fracture and decreased eyesight.
6. Claimant's physical symptoms are right shoulder pain (daily, 10/10, sharp and aching constant), left shoulder pain (9/10, daily, constant but not sharp), pain in left ball of foot (daily, when walks on it, 7/10), pain in low back L5 (daily, 8/10, sharp pain), left knee (5/10), can't breath on one side of nose, decreased vision (Claimant has contacts for seeing distance but is able to drive. Claimant does not use reading glasses) and numbness in right side from buttocks to leg.
7. Claimant's mental symptoms are some memory problems (long term), concentration not that good, anxiety attacks (very irritable around people, constant noise bothers him – puts him into psychotic mode, shakes and wants to kill somebody), confusion, fear/anger, increased appetite, sleep disturbances (5 hours sleep per night, interrupted 4-5x), suicidal thoughts (4-5x/month), behavior in public (doesn't go anywhere), hallucinations (hears things, sometimes people talking in head), and some paranoia.
8. Claimant reported the following hospitalizations:
 1. 12/26/02 - Arthroscopy of the right shoulder with arthroscopic flap repair (torn rotator cuff)
 2. 12/15/ 03 – diagnostic arthroscopy right shoulder with open biceps tenodesis
 3. 2004 – arthroscopy
 4. 2004/2005 – open surgery right shoulder
 5. 1/25/05 – Diagnostic arthroscopy right shoulder with removal of sutures and debridement of labrum. Bone spurs taken out
 6. 2/2010 for stomach attack.
9. Claimant took Vicodin for 8 ½ years. However, he has not been treating with any physicians for the past six months so he is currently not taking any medications.
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a 12th grade education. In addition, Claimant has a GED.
12. Claimant is able to read, write. Claimant testified that he can add and subtract, multiply and divide sometimes. Claimant testified that he can make change by counting on his fingers.

13. Claimant last worked 8/16/07 at a Chevrolet dealership as a new car porter/maintenance guy. Claimant kept cars color coded, clean, and colors matched. Claimant also cleaned, and did general electrical, plumbing, maintenance, etc. The job required that Claimant be on his feet every day, bending/stooping, and lifting up to 60 lbs. Claimant worked there since 1989 of/on for 20 years. Claimant left this position due to a dispute with his employer.
14. Claimant has prior employment experience cutting grass (push mower, lifting trimmer, blower, etc) and as a punch press operator (standing, bending/stooping, lifting).
15. Claimant testified to the following physical limitations:
 - i. Sitting: a couple hours and then has to stand up.
 - ii. Stand: 3 hours and has to sit
 - iii. Walk: 2 blocks
 - iv. bend/stoop: Difficulty getting up
 - v. lift: 10 lbs.
 - vi. grip/grasp: no
16. Claimant performs household chores such as vacuuming, cleaning windows standing (no ladders), picking up after dogs outside, walks dogs sometimes (no leashes required – yorkie, black lab and min pin lab), takes out the trash, can cook some things, does dishes, mows the lawn, and shovels snow sometimes.
17. Claimant testified that he takes his dogs for walk every other day and goes less than a mile (around the block). Usually the dogs are on leashes when Claimant takes them out.
18. Claimant does not use any type of assistive devices.
19. The Department found that Claimant was not disabled and denied Claimant's application on October 30, 2009
20. Medical records examined, in part, are as follows:

8/12/09 Internal Medicine Examination Report (Exhibit 1, pp. 5-6)

HX: Severe back and shoulder pain with history of vertebral trauma. Pain in left foot and toe secondary to trauma.

GENERAL: Pain level 5/10

MUSCULOSKELETAL: Tenderness to right shoulder, LS spine

PHYSICAL LIMITATIONS: Lifting 10 lbs occasionally, stand/walk less than 2 hours in 8 hour work day, no reaching/pushing/pulling with arms

5/29/09 Psychiatric IME (Exhibit 2)

HX: Hospitalized once in 1993 when had a bad trip coming down from crack cocaine and felt suicidal. Substance abuse treatment in April, 1993. History of right shoulder

pains with bone spurs after falling off a 4-wheeler in 2001 and lifting weights at gym. Several arthroscopic surgeries from 2002 – 2006. Back pain since car accident at 17 years.

EMOTIONAL RX: anxious but pleasant. He did not have any symptoms of severe depression

DX: No current psychiatric dx. History of polysubstance dependence disorder, Alcohol, PCP, Cannabis and Cocaine (in sustained remission). Rule out antisocial personality disorder.

3/30/09 Physical Medicine IME (Exhibit 3)

HX: shoulder pain and elbow pain. He complains that his whole body hurts him. Poor vision without contacts, right thumb numbness, pain in left toes, low back pain. Prior left knee surgery and shoulder surgery. Review of a letter from doctor dated 3/12/09 which indicates that “this patient has been having increasing shoulder pain and elbow pain since he had surgery in 2005. The patient has been seen by many specialists and completed physical therapy and is currently on multiple pain medications.”

EXAMINATION: The patient is able to walk on heels and toes and does not demonstrate an ataxic gait. He gait is stable. He does not require a cane or ambulatory assistive device. Straight leg raising in the seated position does not result in any pain in supine position. He says that he gets knee pain as his legs are elevated to 80 degrees but there is no complaint of back pain. Give way weakness is noted in the muscles crossing the shoulder girdle due to complaints of pain in the shoulder. Cervical range of motion is full but there is pain at the limits of motions. Low back motion shows normal lumbar motion with complaints of pain at the limits of motions. Shoulder range of motion bilaterally is normal but slow and painful.

IMPRESSION: Chronic Bilateral Shoulder Pain with Bilateral Shoulder Internal Derangement and Chronic Neck and Low Back Pain. This patient has had multiple shoulder surgeries. It appears that his shoulder complaints are the worst and he is certainly limited in his activities regarding his shoulders.

CURRENT ABILITIES:

Sit: 2 hours

Stand: up to 4-5 hours

Bend/Stoop: only 5 min then increased low back pain

Carry/push/pull: painful

7/24/09 Internal Medicine Report (Exhibit 1, p. 196)

Follow up visit for pain in joint involving shoulder region, ankle and foot and upper arm.

2/5/09 Work Restriction Note (Exhibit 1, p. 386)

Pt is well known to our practice and has been seen here since 2003. He has had multiple surgeries to both shoulders and is still in severe amount of pain on a daily basis. He is having increased difficulty lifting, carrying, pushing, pulling heavy objects and this will significantly limit his working ability.

8/19/08 Internal Medicine Report (Exhibit 1, p. 53)

Moderate shoulder pain that has been occurring in a persistent pattern for months.

3/16/07 Internal Medicine Report (Exhibit 1, p. 177, 181)

Acute onset of shooting constant back pain in lumbosacral area that radiates to the right groin and left leg. The symptoms are aggravated by exertion

8/9/06 Optometrist Notes (Exhibit 4)

Being treated for the symptoms of photophobia therefore glare is a constant problem.

9/21/06 Internal Medicine Report (Exhibit 1, p. 39)

Moderate shoulder pain onset sudden and constant

9/21/06 Internal Medicine Report (Exhibit 1, p. 92)

Onset of moderate acute shoulder pain in a persistent pattern for months. The course has been decreasing. Going through PT now with pain in rotator, trap and ac joint afterward. Taking pain meds with limp and muscle relaxers etc.

5/24/06 Operative Note (Exhibit 1, p. 446)

Primary Arthroscopic Left Shoulder Subacromial Decompression

4/21/06 Left Shoulder MRI without contrast (Exhibit 1, p. 110)

1. There is abnormal signal intensity of posterior labrum at 9:00 likely representing a tear.
2. Minimal intrasubstance tear of the supraspinatus as well as tendinopathy of the supraspinatus tendon and infraspinatus tendon.
3. Low signal intensity within the rotator interval and tendinopathy of intraarticular portion of the long head of biceps tendon may relate to clinical symptoms of adhesive capsulitis

2/10/05 Operative Note (Exhibit 1, p. 27)

Diagnostic arthroscopy, right shoulder with removal of sutures and debridement of labrum.

12/14/03 Operative Note (Exhibit 1, p. 28)

Diagnostic arthroscopy, right shoulder with open biceps tenodesis

12/26/02 Operative Note (Exhibit 1, p. 25, 26)

Arthroscopy of the right shoulder with arthroscopic flap repair

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et*

seq., and MCL 400.105. Department policies are found in the Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has the demonstrated

ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, he is not disabled regardless of how severe his physical and mental impairments are and regardless of his age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant last worked in August, 2007. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples include:

- (1) Physical functions such as walking, standing, sitting, pushing, pulling, reaching, carrying or lifting, 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. 20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect

the claimant's ability to work," "regardless of the claimant's age, education, or prior work experience." *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant's ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

To be eligible for MA-P, claimant must have a medically determinable impairment, meaning impairment(s), that can be demonstrated by a physical or mental examination, and/or by X-rays. Findings consist of symptoms, signs and laboratory findings. Signs are anatomical, physiological or psychological abnormalities which can be observed apart from statements (or testimony) of claimant which are considered symptoms. (20 CFR 416.928). Either claimant's or another's statements alone are not enough to establish a physical or mental impairment (20 CFR 416.929(a)) and must be supported by medically identifiable signs as explained above. The reason being because symptoms are a person's own private experience and may or may not be caused by a real physical or mental illness.

In this case, the Claimant has presented medical evidence from medical providers showing diagnoses of chronic bilateral shoulder pain with bilateral shoulder internal derangement following multiple shoulder surgeries and chronic neck and low back pain. Physical examination revealed tenderness to the right shoulder and lumbosacral spine and give way weakness noted in the muscles crossing the shoulder girdle. Claimant's physician also placed him on physical limitations in terms of sitting, standing, walking and lifting. The medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant's impairments under step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 1.02 *Major dysfunction of a joint* was reviewed. In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Claimant has been placed on physical limitations by his most recent treating physician of lifting 10 pounds occasionally, standing/walking less than 2 hours in an 8 hour work day and no

reaching, pushing or pulling with his arms. Claimant's prior employment as a new car porter and maintenance man, based on Claimant's testimony of his job duties would have been considered semi-skilled (due to electrical and plumbing repair) and medium in exertional level as it required lifting up to 60 lbs and being on his feet all day. Given the restrictions recommended by Claimant's treating physician, Claimant would be unable to return to this position.

Claimant would also have been unable to perform any of his other prior jobs (lawn maintenance person – light exertional level, unskilled; punch press operator - light and unskilled). Claimant is limited to sedentary work based on his doctor's recommended physical limitations. Claimant would, therefore, be restricted to sedentary work and would be unable to return to any of the above referenced occupations. Evaluation under step five will be made according to the law.

5. Ability to Perform Other Work

In the fifth step of the sequential evaluation of a disability claim, the trier of fact must determine: if the claimant's impairment(s) prevent him/her from doing other work. 20 CFR 416.920(f). This determination is based on the claimant's:

- (1) "Residual function capacity," defined simply as "what you can still do despite your limitations," 20 CFR 416.945.
- (2) Age, education and work experience, and
- (3) The kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 829 (1987).

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally at the limits of sedentary as sedentary work. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR

416.967(a) describes sedentary work:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at fifty-three years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g). Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render him capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of nontransferable semi-skilled work, Claimant is disabled by law for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.14.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

A person is considered disabled for purposes of SDA 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

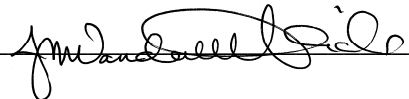
the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of June 17, 2009.

Therefore the department is ordered to initiate a review of the application of June 17, 2009, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed April, 2011.

/s/  _____

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 21, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court 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.

JV/ hw

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