

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE:

[REDACTED]

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on [REDACTED] by [REDACTED], who has since left employment with the State Office of Administrative Hearings and Rules. This hearing was completed by [REDACTED] after reviewing the written and spoken record. Claimant was represented by [REDACTED]. Claimant appeared and provided testimony, along with his wife, [REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 [REDACTED] claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On [REDACTED], the [REDACTED] denied claimant's application stating that claimant was capable of performing other work according to the medical-vocational grid, pursuant to 200 CFR 416.9120(f).
- (3) On [REDACTED], the department caseworker sent claimant notice that his application was denied.
- (4) On [REDACTED], claimant filed a request for a hearing to contest the department's negative action.

- (5) On [REDACTED], the [REDACTED] again denied claimant's application stating that he was capable of performing other light work, pursuant to 20 CFR 416.967(b) and vocational rule 202.20.
- (6) A telephone hearing was held on [REDACTED].
- (7) Claimant is a [REDACTED] man whose birth date is [REDACTED]. Claimant is [REDACTED]. Claimant completed high school and a year and a half of college classes in criminal justice. Claimant reports that he has a hard time reading and writing and that he can perform very basic subtraction and addition.
- (8) Claimant reports that he last worked in [REDACTED]. He claims experience in factory work.
- (9) Claimant alleges as disabling impairments: diabetes, neuropathy, hypertension, gout, migraines, knee problems, sleep apnea, a learning disability and depression.
- (10) Claimant resides with his wife and two step-children (ages 13 and 9) in their own home. Claimant does not have a driver's license due to his physical condition. Claimant reports that he can cook and help clean the house on "good days" and can only grocery shop with his wife using the assistance of a motorized cart.
- (11) Claimant reports that he can sit for about an hour that he can stand for about 15 – 20 minutes and that he can walk the distance of a large parking lot. Claimant reports that he can shower and dress, but sometimes needs assistance with pants. Claimant reports that he sometimes walks with the assistance of a walking stick.
- (12) Claimant reports that a typical day is watching television, drawing, moving from the couch to a chair to get comfortable and cooking and cleaning a little. Claimant indicates that he does smoke and has been advised to quit. He has reduced his smoking to less than a pack per day. He denies alcohol consumption or the use of illicit substances.
- (13) Claimant was denied by the Social Security Administration at step one and is currently in the appeals process.

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 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 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 404.1572(a) and 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 404.1572(b) and 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/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2006. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, the claimant's symptoms are evaluated to see there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The objective medical evidence shows the claimant to have a history of poorly controlled type 2 diabetes, complaints of neuropathic pain in his feet and legs, chest pain, and a history of left leg pain, with previous arthroscopic surgery on the left knee. Claimant's medical history shows a history of obesity and noncompliance with medications and diet in relation to his diabetes. Claimant has a long history of smoking about one pack of cigarettes per day. While the claimant reports disability due to gout, sleep apnea, and a learning disability, there is no objective evidence of these diagnoses or the nature or severity of any limitations.

A May 5, 2008 examination by the claimant's physician indicates that he was capable of working and that the claimant has been noncompliant with medical regimens, which has caused wild fluctuation in his blood sugar, which, in turn, alters his mental status. The claimant was limited to lifting less than 10 pounds frequently, 20 pounds occasionally and never more than 20 pounds. Assistive devices were not required for ambulation and the claimant was found to be able to use his all extremities for repetitive actions such as grasping, reaching, pushing/pulling, fine manipulating and operating foot controls. Claimant was also found to have some possible limitations with memory and sustained concentration due to large fluctuations in the claimant's blood sugar levels due to noncompliance with medical instructions.

A [REDACTED] CT of the head produced normal results, with the ventricles and extraaxial spaces normal, no intracranial hemorrhage, mass or mass effect. There was no acute or subacute infarct and no previous major infarct. Bone windows were unremarkable and there was no evidence of paranasal sinus disease.

A [REDACTED]-ray of the chest found heart size contra mediastinum and pulmonary vasculature within normal limits, no significant air space consolidation, some minimal lingular scarring which persists, no pneumothorax and osseous structures were unchanged.

The claimant presented to the emergency room on [REDACTED] with a headache. The claimant was given morphine, valium and phennergan and discharged later the same day.

On [REDACTED], the claimant was seen by a physician for left knee pain. Claimant reported that he was experiencing more pain and more sensations of pins/needles in his toes, especially at night. The claimant was given an injection and his dosage of neurontin was increased.

On [REDACTED], the claimant presented to the emergency room with a sore throat. A strep screen was negative and the claimant was discharged the same day.

On [REDACTED], the claimant underwent a left¹ knee incision to drain an abscess. The physical examination found the claimant to have an abscess over the anterior portion of the knee right over the kneecap. There was no significant involvement of the joint. Claimant had full flexion and extension, there was no obvious effusion and the affected area was confined to the skin with some mild overlying cellulitis.

On [REDACTED]009, the claimant underwent two chest x-rays due to chest pain. The first found the lungs to be clear and well expanded, with no infiltrations and a normal cardiomedial silhouette. The second found the ribs intact, with no evidence of fracture or soft tissue abnormality.

On [REDACTED], the claimant presented to the emergency room for a possible fracture to his elbow. The claimant reported that he had fallen off a boat trailer and landed on his right elbow. A right distal humerus fracture was confirmed and the claimant was transferred to another hospital. A physical examination found full range of motion through the left hip, knee, ankle and foot. There was a small abrasion over the left patella, but no evidence of ligamentous instability to the left knee, no focal tenderness to the osseous structures of the left knee, no joint effusion, extensor mechanism is intact and the patella is midline. Claimant's right upper extremity revealed full passive range of motion of the right shoulder. He was unwilling to move his right elbow due to the pain, but there was full range of motion with his right wrist and hand. An open reduction

¹ There is a discrepancy in the medical documentation as to whether it was the right or left knee. The physical examination page indicates that it is the right knee. The surgical procedure page notes it is the left knee.

internal fixation of the right distal humerus fracture was performed on [REDACTED]. The claimant was discharged on [REDACTED].

On [REDACTED], an MRI of the cervical spine was performed due to the claimant's complaints of headaches and neck pain. The study found vertebral bodies and intervertebral disc spaces satisfactorily developed and preserved. The spinous process and odontoid process were intact and bone mineralization was normal. There were no osteoblastic nor lytic lesions nor evidence of acute osseous pathology was identified. The retropharyngeal soft tissues were normal. The clinical impression was a normal cervical spine.

Claimant participated in an independent medical evaluation on [REDACTED]. This exam found the claimant to have diabetes, but no end organ damage. Claimant was found to have a mild left-sided limp, although his orthopedic maneuvering on and off the table and squatting were performed without difficulty. Heel and toe walking was performed with mild difficulty. Strength was 5/5 in the bilateral lower extremities and the range of motion was full. Strength was 4/5 in the right arm (which was still in a brace from the broken humerus) with 80% hand grip and intact manual dexterity. Left arm had 5/5 strength and grip.

Claimant participated in a mental independent medical examination on [REDACTED]. The examiner found claimant to be reality-based and oriented, but with low self-esteem. Claimant's thought processes were logical and organized, and his speech was clear and understandable. Claimant's memory and concentration were grossly intact. Claimant reported episodes of panic attacks, but did not evidence any signs of psychosis. Claimant was found to have major depression, although this was felt to be partly related to bereavement.

A [REDACTED] MRI of the cervical spine found a mild exaggeration of the normal lordotic curvature with the apex at the level of C5 – C6, which caused mild narrowing of the central canal with an AP diameter of 0.95. No significant or acute abnormalities of the cervical spine were found.

An [REDACTED] MRI was conducted due to claimant's knee pain. The MRI of the left knee found intact cruciate ligaments, collateral ligaments, quadriceps and infrapatellar tendon and intact menisci. Chondromalacia of the patella was noted and it appeared more significant on the left side. The MRI of the right knee showed the anterior and posterior cruciate ligaments were intact. The medial collateral ligament was intact. There was mild thickening at the origin of the lateral collateral ligament, suggesting a degree of degeneration and/or possibly a previous tear. A chronic tear was suspected.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404,

Subpart P, App. 1, 12.00(C). In this case, while the claimant is taking medication for depression and has for quite some time, there is no objective evidence in the record to demonstrate the depression severely limits the claimant's ability to function in areas such as activities of daily living, social functioning, concentration, persistence and pace and the ability to tolerate increased mental demands associated with competitive work.

At Step 2, claimant's diagnosed impairments have left him with some pain and depressive symptoms. However, it must be noted many of these impairments appear capable of adequate symptom management with current prescription medications. Further, it is also noted that the claimant's record is replete with notations that he is not compliant with medication regimens and doctor's recommendations. The claimant has been advised to lose weight, quit smoking and control his blood sugar levels through diet numerous times. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.930).

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, claimant's medically managed conditions meet the *de minimus* level of severity and duration required for further analysis.

The analysis next proceeds to Step 3, where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 4, there is some evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform his previous work, as his work history is mostly factory work. Construing this evidence in the light most favorable to claimant, he is not disqualified at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other jobs.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy. This Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular

guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a younger individual (age 41), with a high school education or more and an unskilled or semi-skilled work history is not disabled. Vocational Rule 202.20; 202.21.

The claimant has not presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
[Redacted Signature]

Date Signed: 4/11/11

Date Mailed: 4/11/11

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.

[Redacted]