

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-13758
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 25, 2011
DHS County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in-person hearing was held on May 25, 2011. The Claimant appeared and testified along with advocate ADVOMAS through [REDACTED]. [REDACTED] Assistance Payment Supervisor, appeared on behalf of the Department of Human Services (Department).

ISSUE

Was the Department correct in denying Claimant's MA and SDA applications?

FINDINGS OF FACT

The Administrative Law Judge, bas ed upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for MA-P and SDA on August 9, 2010.
2. The Medical Review Team denied t he MA application on September 9, 2010. Claimant was approved and subsequently c losed for SDA on December 7, 2010. Both issues are incorporated into this decision.
3. Claimant filed a request for heari ng on Dec ember 6, 2010 regarding the MA denial.
4. A hearing was held on May 25, 2011.
5. On February 3, 2011 the State Hearing Review Team denied the application because the medical ev idence of record indic ates that

- Claimant retains the capacity to perform a wide range of at least sedentary work.
6. Claimant is 5'8" tall and weighs 209 pounds.
 7. Claimant is 42 years of age.
 8. Claimant's impairments have been medically diagnosed as back pain, ankle injury, hip problems, renaud syndrome, and acid reflux.
 9. Claimant has the following symptoms: back pain, bone spurs, swelling in both ankles, insomnia.
 10. Claimant completed the 10th grade.
 11. Claimant is able to read, write, and perform basic math skills.
 12. Claimant is not currently working.
 13. Claimant last worked as a HVAC worker.
 14. Claimant lives with his aunt and uncle.
 15. Claimant testified that he cannot perform most household chores.
 16. The Claimant's limitations have lasted for 12 months or more.
 17. Claimant takes the following prescribed medications
 - a. Motrin
 - b. Tramadol
 - c. Metaformin
 - d. Omeprazole
 18. Claimant testified to the following physical limitations:
 - i. Sitting: 15-20 minutes
 - ii. Standing: 10 minutes
 - iii. Walking: 25 feet
 - iv. Bend/stoop: difficulty
 - v. Lifting: 20 lbs.
 - vi. Grip/grasp: no limitations
 19. Physical therapy has been ordered for Claimant but he is unable to complete it because of his lack of insurance and affordability.
 20. Claimant sustained a severe right ankle fracture and left foot fracture in May 2010.

21. [REDACTED] is unable to work for 12 months due to severe calcaneal fracture.”
22. [REDACTED] Claimant not able to climb, not able to walk/stand greater than 2 hours.”
23. Claimant is not able to put any weight on his right ankle and it has given out on numerous occasions.
24. Claimant’s right ankle was in a cast for 3 months and a splint for 8 months.
25. Claimant walks with a limp and favors his left leg.
26. Claimant cannot stand on his toes or heels, and has difficulty with stairs.
27. Claimant’s ankle has given out and he has fallen on several occasions.
28. Claimant testified that his highest pain level is a 6-7 on a 10 point scale on a daily basis and that the lowest his pain level gets to is a 3.

CONCLUSIONS OF LAW

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).

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 (formerly known as the Family Independence Agency) 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 Bridges Reference Manual (BRM).

In order to receive MA benefits based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also known as Medicaid, is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When Claimant is found either disabled or not disabled at any point in the process, the Claimant is not considered further.

Addressing the following factors:

The first factor to be considered is whether the Claimant can perform SGA as defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, 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. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 1.02, 5.06, 6.02, 7.02, 11.14, 12.02 and 1.06 were considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a heating and cooling worker. Being a heating and cooling worker is considered medium work. The Claimant's impairments would prevent him from doing past relevant work. This Administrative Law Judge will continue through step 5.

In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated... 20 CFR 416.945(a).

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).

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

As required by the treating physician rule, this Administrative Law Judge gives credibility and weight to the assessment of Claimant's treating physician, [REDACTED] is unable to work for 12 months due to severe calcaneal fracture."

[REDACTED] "Claimant not able to climb, not able to walk/stand greater than 2 hours." These assessments are supported by substantial evidence in the record. Claimant's testimony and the observations of this Administrative Law Judge at hearing also support his assessment. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion, and

the undersigned does not see a particular reason to discount this opinion.
Rogers; Bowen v Commissioner, 473 F. 3d 742 (6th Cir. 2007)

Therefore, after careful review of Claimant's medical records and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 2, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for the purposes of the MA program.


With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets Federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in BEM 261. As Claimant meets the Federal standards for SSI disability, as addressed above, and alleges an onset date of 2007, the undersigned concludes that the Claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of May 2010.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated August 9, 2010, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for June 2012.

Aaron
Administrative
for
Department



McClintic
Law Judge
Ismael Ahmed, Director
of Human Services

Date Signed: June 27, 2011

Date Mailed: June 27, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

AM/cl

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