

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

IN THE MATTER OF:

Reg

No: 201118199

Issue No: 2009

Case No:

Date:

16, 2011

County-20

[REDACTED]
[REDACTED]
[REDACTED]
Washtenaw

Hearing

May

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400.9; MCL 400.37 upon Claimant's request for a hearing. After due notice, an in person hearing was held on May 16, 2011. The Claimant and Claimant's Authorized Representative [REDACTED] through [REDACTED] appeared and Claimant testified. [REDACTED] Medical Contact Worker and [REDACTED] appeared on behalf of the Department.

ISSUE

Was the Department correct in denying Claimant's MA application?

FINDINGS OF FACT

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

1. Claimant applied for MA-P on June 4, 2010.
2. The Medical Review Team denied the application on October 21, 2010.
3. Claimant filed a request for hearing on January 26, 2011 regarding the MA denial.
4. A hearing was held on May 16, 2011.
5. On February 23, 2011 the State Hearing Review Team denied the application because Claimant retains the capacity to perform a wide range of light work.

7. Claimant is 5'9" tall and weighs 162 pounds.
8. Claimant is 52 years of age.
9. Claimant's impairments have been medically diagnosed as multiple sclerosis, vision problems, left sided paralysis and depression.
10. Claimant completed the 12th 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 crane operator. The job duties included lifting up to 50lbs., standing, bending/ stooping, grasping. Claimant previously worked as an auto technician, a car lot manager and tow truck driver.
14. The Claimant testified he suffers with the following symptoms: fatigue, right side weakness and numbness, blurry vision in right eye, difficulty concentrating.
15. Claimant lives with her father.
16. Claimant testified that he can perform household chores and does yard work.
17. The Claimant's limitations have lasted for 12 months or more and are expected to last for 12 months.
18. Claimant was found to have a GAF of 60 on November 17, 2010.
19. Claimant was found to have a GAF of 65 on June 22, 2010.
20. Claimant takes the following prescribed medications
 - a. Cele xia
 - b. Omeprazole
21. Claimant testified to the following physical limitations:
 - i. Sitting: 1-2 hours
 - ii. Standing: 30 minutes
 - iii. Walking: 3 blocks
 - iv. Bend/stoop: difficulty

- v. Lifting: 5-10 lbs.
- vi. Grip/grasp: no limitations

- 22. Claimant receives unemployment compensation.
- 23. Claimant uses a cane most of the time.
- 24. Claimant's treating physician Rebecca Patrias completed a medical examination reports on January 17, 2011 and states that Claimant is able to lift 10 lbs. occasionally, stand or walk less than 2 hours in an 8 hour work day, and sit less than 6 hours in an 8 hour work day.
- 25. Claimant cares for his elderly father whom he lives with.
- 26. Claimant testified that he has no issues with pain.
- 27. Claimant does not see a psychiatrist or psychologist on a regular basis.

CONCLUSIONS OF LAW

The Medical Assistance (MA-P) 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 administers the MA-P 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).

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 CFR 416.901). The Department, being authorized to make such disability determinations, utilizes the Social Security definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which 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 Substantial Gainful Activity (SGA) 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 whether 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 1.01, and 11.18, 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 crane operator, auto technician. Working as a clerk would be 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 her 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 functional capacity for substantial gainful activity.

After careful review of the medical evidence presented and Claimant's statements, and considering the Claimant in the most restrictive circumstances this Administrative Law Judge finds that Claimant would be able to perform work at least work on the light exertional level. Claimant's testimony that he can lift only 10 pounds and walk 3 blocks is not supported by the medical records in his file, Claimant has limitations but not to the severity that he testified to. It should be noted that Claimant was receiving unemployment compensation at the time of hearing. He has been reporting to the unemployment agency that he is ready, willing and able to work for the past many months. Therefore, his credibility is somewhat questionable. Claimant testified that he is the sole caregiver for his elderly father whom he lives with, this also suggests that he is capable or performing at least light work. Claimant was hospitalized in April 2010 but did not receive substantial medical treatment in the six months prior to hearing except for a few follow up office visits with his doctor. The Claimant is approaching advanced age. 20 CFR 416.963. Claimant's previous work has been unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 202.14 the Claimant is not disabled for the purposes of MA. Claimant's mental health symptoms are not significant enough to limit his ability to work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is not disabled. Accordingly, the Department decision is hereby UPHELD.



Aaron
Administrative
for
Department

McClintic
Law Judge
Maura Corrigan, Director
of Human Services

Date Signed: June 20, 2011

Date Mailed: June 20, 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 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.

AM/ctl

cc: [REDACTED]
Washtenaw County DHS (20)

A. McClintic
Administrative Hearings