

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

IN THE MATTER OF:

Issue

[REDACTED]

Reg. No.: 2011-19571

No.: 2009

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 IMN through [REDACTED]. [REDACTED] appeared on behalf of the Department of Human Services (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 September 17, 2010.
2. The Medical Review Team denied the application on November 10, 2010.
3. Claimant filed a request for hearing on February 1, 2011 regarding the MA denial.
4. A hearing was held on May 25, 2011.
5. On March 1, 2011 the State Hearing Review Team denied the application because the medical evidence of record indicates that Claimant's condition is improving or expected to improve within 12 months of onset.
6. Claimant is 5'10" tall and weighs 180 pounds.

7. Claimant is 27 years of age.
8. Claimant's impairments have been medically diagnosed as back pain, right shoulder injury, thoracic compression fractures, glenoid labrum tear, bulging discs.
9. Claimant has the following symptoms: back pain, right shoulder pain, insomnia and fatigue.
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 an excavator.
14. Claimant lives by himself.
15. Claimant testified that he cannot perform household chores.
16. The Claimant's limitations have lasted for 12 months or more.
17. Claimant takes the following prescribed medications:
 - a. Methadone
 - b. Norco
 - c. Ultram
18. Claimant testified to the following physical limitations:
 - i. Sitting: 10 minutes
 - ii. Standing: 10 minutes
 - iii. Walking: 30 feet
 - iv. Bend/stoop: difficulty
 - v. Lifting: 10 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 wears a back brace and shoulder sling for his right shoulder.
21. Claimant testified that his pain level is an 8 on a 10 point scale on a daily basis and that the lowest his pain level gets to is a 6.

22. Claimant has difficulty sleeping because of back pain and only sleeps 3 hours per night on average.
23. Claimant needed help tying the neckties he wore to the hearing.

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 (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 CFR 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 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 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 and 1.02 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.

Claimant has also made allegations of disabling pain. When considering pain, there must be an assessment of whether the claimant's subjective complaints are supported by an objective medical condition which can be expected to cause such complaints. 20 CFR 416.929, *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007). An assessment must be done to consider whether objective medical evidence confirms the severity of the alleged pain or whether the objectively established medical condition is of such a severity that it can reasonably be expected to produce the alleged disabling pain. **Duncan v Secretary of HHS**, 801 F2d 847, 853 (1986); *Felisky v Bowen*, 28 F3d 213 (6th Cir, 1994). Furthermore, the adjudicator must evaluate the intensity, persistence and limiting effects of the symptoms on the Claimant's ability to do basic work activities, i.e. daily activities, location, duration, frequency, intensity of symptoms, aggravating and precipitating factors, type, dosage effectiveness, and side effects of any medications,

and any other treatment undertaken to relieve symptoms or other measures taken to relieve symptoms such as lying down. *Rogers*.

In this case, medical evidence from Claimant's doctor confirms existence of a condition which can be expected to cause complaints of pain. The specific nature of Claimant's injury indicates bulging discs, a condition which often results in extreme, sometimes disabling, pain. Claimant's treating sources confirm Claimant's credibility regarding the complaints of pain, and further state that Claimant's injury is one as such that may cause disabling pain. Furthermore, the evidence presented indicates that Claimant's medications have more than a nominal impact on Claimant's ability to perform basic work functions. The evidence indicates that Claimant takes Methadone in the amount of 5mg, Norco 325 up to 10 times per day, and Ultram 50mg. All three of these medications have common side effects of drowsiness, somnolence, and sedative-hypnotic states. These medications are known to severely limit an individual's ability to maintain concentration, persistence, pace, and affect; they can also impair memory, and can affect the ability to sustain gainful activity. Claimant has reported all these side effects.

The Administrative Law Judge therefore concludes that Claimant also has functional limitations resulting from his symptoms that affect his abilities to understand, carry out and remember instructions, and maintain concentration, persistence and pace.

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 an excavator. Being an excavator is considered medium to heavy work. The Claimant's impairments would prevent him from doing past relevant work. Claimant cannot do the requisite lifting and has limited use of his right arm. 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 valued... 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.


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 not be able to perform work on the sedentary level. Claimant credibly testified that he cannot do the requisite lifting and that the restrictions on his ability to stand and sit for more than 10 minutes would preclude him from working even at the sedentary exertional level. Claimant also has limited use of his right arm. Claimant's testimony and the observations of this Administrative Law Judge at hearing also support his assessment. Therefore, 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.

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 July 2010.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated September 17, 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 McClintic
Administrative Law Judge
for Ismael Ahmed, Director
Department 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.

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