

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

IN THE MATTER OF: Reg. [REDACTED]

No.: 2011-20562
Issue No.: 2009
Hearing Date: June 6, 2011
DHS County: Macomb (20)

ADMINISTRATIVE LAW JUDGE Robert J. Chavez

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 hearing was held on June 6, 2011 at the Department of Human Services office in Macomb County, Michigan, District 20. Claimant was represented at hearing by [REDACTED]

ISSUE

Was the denial of claimant's application for MA-P for lack of disability correct?

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 and retroactive MA-P on August 5, 2010.
- (2) Claimant is [REDACTED] years old.
- (3) Claimant has a limited education.
- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of exporting and carpentry.
- (6) These positions were performed at the heavy exertional levels.
- (7) Claimant has a history of left knee and leg problems, mild COPD, pulmonary embolism, and mild arthritis.
- (8) Tests show full range of motion of the knees, though pain was observed at the end of flexion.
- (9) Claimant had a cyst on the knee which was removed and has had no further recurrences.
- (10) Claimant's hands cramp on occasion from arthritis.
- (11) Claimant is asymptomatic from the pulmonary embolism.
- (12) Claimant experiences mild shortness of breath.

- (13) Claimant has no medically imposed lifting restrictions.
- (14) Claimant can stand for limited periods of time and can walk 1 block, due to pain.
- (15) Claimant has no restrictions with regards to ambulation.
- (16) On November 10, 2010, the Medical Review Team denied MA-P, stating that claimant could perform other work.
- (17) On November 16, 2010, claimant was sent a notice of case action.
- (18) On January 28, 2011, claimant filed for hearing.
- (19) On March 9, 2011, the State Hearing Review Team denied MA-P, stating that claimant was capable of performing other work.
- (20) On June 6, 2011, a hearing was held before the Administrative Law Judge.
- (21) The record was extended for additional medical documentation; on November 28, 2011, SHRT again denied MA-P, stating that claimant was capable of performing other work.

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 Bridges Reference Manual (BRM).

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 Bridges Reference Manual (BRM).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made

at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still participating in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2011 is \$1,640. For non-blind individuals, the monthly SGA amount for 2011 is \$1000

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the

disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of left knee and leg problems, mild COPD, pulmonary embolism and mild arthritis, according to the great weight of the evidence by both the Department and claimant's treating source. The symptoms described by the claimant, and supported by independent medical evidence, support the existence of a condition that would result in an impairment that would limit claimant's ability to perform basic work activities. Records indicate that the claimant has difficulty standing and walking for long periods of time. This impairment would affect functions in the workplace. The medical records show that the claimant's impairment can be expected to last 12 months. Claimant thus passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 1.00 (Musculoskeletal). Claimant has not provided medical evidence required to find disability at this step. The medical evidence presented does not support a finding of disability at this step, as there is no evidence that claimant's knee problems prevent effective ambulation as defined in the listings. Claimant has no symptoms that rise to a listings level from his pulmonary embolism and COPD. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs

- which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis— meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating sources' statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptom, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, it is undisputed that claimant has left knee and leg problems, mild COPD, pulmonary embolism and mild arthritis. Medical reports, supplied by the claimant and Department, indicate that claimant has had a Baker's cyst on the left knee, with pain at full flexion. Claimant has some difficulty with ambulation. Claimant has difficulty bending and reaching, and arising from a squatting position. Knee joint movement is decreased due to pain at full flexion. No other physical limitations are noted in the record or through testimony. Claimant testifies to no side effects of medications that inhibit concentration. Medical records indicate that claimant has no specific current lifting restrictions, can sit for extended periods of time if allowed to shift positions, and has no trouble using his hands, except for the very occasional cramping, due to arthritis.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment for the purposes of walking and standing for periods of time exceeding 15 minutes. Claimant has no limitations in the use of his hands for manipulation. Claimant has postural limitations (e.g. stooping, bending, and crouching). Claimant has no visual limitations or communicative (hearing, speaking) limitations. Claimant has no trouble concentrating for long periods of time. Claimant's PRW includes exporting and carpentry. These jobs, as typically performed and described by the claimant, require standing and walking for long periods of time. Therefore, given the functional requirements as stated by claimant (which is consistent with how these jobs are typically performed) for these jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does not retain the capacity to perform his past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the claimant's impairment(s) prevents 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/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work that the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (20 CFR 404, Appendix 2 to Subpart P, Section 200-204 et. seq.) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is ■■■ years old, with a limited education and a history of unskilled work performed at the heavy exertional levels. Claimant's exertional impairments likely render claimant able to perform work at the sedentary level.

Claimant's medical records do not contain any current lifting restrictions, and the claimant testified that he had no real lifting restrictions. This lifting restriction would not limit claimant from sedentary work.

Claimant testified that he should avoid work that requires standing and/or walking. Claimant testified that he could stand and walk for 15 minutes. Claimant testified that his knee and leg problems prevented standing or walking for longer periods of time. However, examinations and testimony do not indicate any particular problem that would prevent claimant from performing work in the sedentary capacity. The medical records do not reflect that claimant has trouble with extended periods of sitting down, or that

claimant would have trouble lifting less than 10 lbs. All available medical records indicate a loss of range of motion in the lower extremities, due to pain at full flexion, and some postural limitations with squatting and bending, but neither of these limitations affects work in the sedentary capacity. Claimant did not testify to any limitation with the use of his hands beyond the occasional cramping. While claimant has had a pulmonary embolism, and COPD, claimant does not use an inhaler, and since the placement of a Greenfield filter, has been asymptomatic. Claimant testified that he is capable of most activities of daily living.

Claimant's limitations are thus consistent with sedentary work, which only requires standing and/or walking 2 hours in an 8 hour day, and lifting less than ten pounds during the course of every day work.

The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45-49, age is a less positive factor than for those who are age 18-44. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h)

Therefore, using a combination of claimant's age, education level (which does not provide for direct entry into skilled work), and previous work experience as unskilled, a finding of not disabled is directed. 20 CFR 404, Subpart P, Appendix 2, Rule 201.19.

As stated above, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone.

Claimant has not testified to any nonexertional limitations. There are indications that the claimant experiences pain upon full flexion of the knee, but has no other pain. There is no evidence that claimant's limitations would affect claimant's ability to show up to a sedentary job. While claimant is occasionally distracted by pain, no part of the psychological record would support the finding that claimant's psychological limitations prevent or reduce claimant's sedentary residual functional capacity in any way. Therefore, the undersigned cannot hold that claimant's nonexertional limitations have any effect on claimant's ability to perform work at the sedentary level.

As such, the undersigned holds that claimant retains the residual functional capacity to perform sedentary work. Claimant's non-exertional limitations do not affect this capacity in a meaningful way. As claimant retains the capacity to perform sedentary work, a finding of not disabled is directed by rule. The Department was correct in its assessment and must be upheld.

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 for the purposes of the MA program. Therefore, the decision to deny claimant's application for MA-P was correct.

Accordingly, the Department's decision in the above stated matter is, hereby, **AFFIRMED**.



Robert Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 8, 2012

Date Mailed: March 8, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings

Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

2011-20562/RJC

RJC/cl

cc:

