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



Reg. No. Issue No. Case No. Hearing Date:

2009 4031 June 14, 2011 Wayne County DHS (18)

2011-25592

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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, a telephone hearing was held on J une 14, 2011 from Detroit, Michigan. T he Claimant appeared and testified; **Department of Human Services (DHS)**, **Department of Human Services (DHS)**, Specialist, appeared and testified.

<u>ISSUE</u>

Whether DHS properly denied CI aimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits on the bas is that Claimant is not a disabled individual.

FINDINGS OF FACT

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

- 1. On 1/20/11, Claimant applied for SDA and MA benefits.
- 2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
- 3. On 3/7/11, the Medical Review T eam (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
- 4. On 3/12/11, DHS denied Claimant's application for MA and SDA benefits.
- 5. On 3/2/11, Claimant r equested a hearing disputing t he denial of SDA and MA benefits.

- 6. On 4/5/11, the State Hearing Review T eam (SHRT) determined that Claimant was not a disabled individual (see Exhibit 20).
- 7. As of the date of the administrative hearing, Claiman t was a -year-old male with a height of 5'5" and weight of 137 pounds.
- 8. Claimant smokes. Claimant has no relevant history of alcohol or drug abuse.
- 9. Claimant's highest education year completed was 12th grade.
- 10. Claimant claimed to be a disabled indivi dual based on back and neck impairments.
- 11. Claimant did not allege any mental impairments.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implement ed by Title 42 of the C ode of F ederal Regulations (CFR). DHS (formerly known as the Fa mily Independence Agenc y) admin isters 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 Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 3/2011, the month of the DHS decision which Claimant is dis puting. Current DHS m anuals may be found online at the following URL: <u>http://www.mfia.state.mi.us/olmweb/ex/html/</u>.

MA provides medical assistance to indi viduals and families who meet fi nancial and nonfinancial eligibility factors. The goal of the MA progr am is to ensure that essentia I health car e services are made available to those who other wise would not hav e financial resources to purchase them.

The Medic aid program is comprised of se veral sub-programs which fall under one of two categories; one category is FIP-relat ed and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretake r relatives of dependent children, persons under age 21 and pregnant, or re cently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid

through the SSI-related or FIP-r elated categories. It was not disputed that Claimant's only potential category for Medicaid would be as a disabled individual.

Disability is established if one of the following circumstances applies:

- By death (for the month of death).
- The applicant receives Supplemental Security Income (SSI) benefits.
- SSI benefits were recently terminated due to financial factors.
- The applicant receives Retirement Surv ivors and Disability Insurance (RSDI) on the basis of being disabled.
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances). BEM 260 at 1-2.

It was not disputed that none of the above circ umstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical r eview process which determines whether Claimant is a dis abled individual. *Id.* at 2.

Generally, state agencies such as DHS m ust use the same de finition of disab ility as found in the federal r egulations. 42 CF R 435.540(a). Disabil ity is federally defined as the inabilit y to do any substant ial 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 les s than 12 months. 20 CF R 416.905. A ne arly identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id*. at 9.

Significant duties are duties us ed to do a j ob or run a bus iness. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinic al/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or m related activities or ability to reason and mental disability is alleged. 20 CRF 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statement s by a phys ician or mental health professional that an individual is disabled or blind, ab sent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927.

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920(a)(4)(i). If a person's current work activity meets the definition of SGA, then the person must be found not disabled. In t he present case, Claim ant denied having an y employment since t he date of the MA application; no ev idence was s ubmitted to contradict Claimant's testim ony. Without any current employment, it can only be concluded that Claimant is not performing SGA. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physic allor mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920(a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id*.

The impairments must signific cantly limit a person's basic work activities. 20 CF R 416.920(a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities includes:

- physical functions (e.g. walking, standi ng, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to s upervision, co-workers and us ual work situat ions; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impair ment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a sev ere impairment only when the medical ev idence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the indi vidual's age, education, or work experienc e were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step

two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs* ., 795 F.2d 1118, 1124 (1 st Cir. 1986).

On Claimant was examined by a physi cian and diagnosed with cervical spine degenerative disc dis order and lumbar spinal ar thritis. Claimant's neck and back pain were described by the examinin g physician as "signific ant" (see Exhibit 9). Claimant's musculoskeletal condition was described as "cervical spine tenderness, pain with h rotation" with "lower back stiffness, pain with bending, rotation". The condition was considered deteriorating. The examiner also recommended assistance with Claimant's daily living activities.

Claimant also submitted radi ological reports from the exhibit 10) and (Exhibit 11-14) to demonstrate the history of his back and neck impairm ents. The examiner provided an impression of "moderately severe disc disease C5/C6" (see Exhibit 13). By themselves, the reports are too old to reli ably depict Claimant's current condition; however, taken in conj unction with the reports tended to verify the conclusions re ached in the reports examination by showing a history of worsening back problems.

Based on the conditions des cribed wit hin the signed to conc lude that Claimant's signed to conc lude that Claimant's basic work activities. Claimant's back and neck pain would affect all of Claimant's movements. It is found that Claimant met the de minimus requirements for step two. The disability anal ysis may proceed to step three.

The third step of the s equential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CF R, Part 404. 20 CFR 416.920(a)(4)(iii). If Cla imant's impairments are listed and deemed to meet the 12 m onth requirement, then the Cla imant is deemed disabled. If a listed impairment is not met, then the analysis moves to step four.

Claimant's best listing would fall under musculosk eletal impairments (Listing 1.00). Listing 1.04 applies to spine disorders and reads:

1.04 *Disorders of the spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidenc e of nerve root compression c haracterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with as sociated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); OR

B. Spinal arachnoiditis, confi rmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the nee d for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis re sulting in pseudoclaudic ation, established by findings on a ppropriate medically acceptable imaging, manifested by chro nic nonradicular pain and weakness, and result ing in inabi lity to ambulate effectively, as defined in 1.00B2b.

An inability to ambulate effect ively is defined as "an extrem e limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the indiv idual's ability to independently initiate, sustain, or complete activities. I neffective ambulation is defined generally as having insufficient lower extremity functioning."

There was evidence that Claimant suffered from a spinal disorder based on the diagnosis of degener ative disc disease and spin al arthritis (see Exhibit 9). There was some evidence that a nerve root was compromised. On the examination, it was concluded that at Claimant's L2-L3 vertebrae, anterior and posterior disc bulges and osteophyte contributed to mild left-sided neur al foraminal stenosis. Thus, Claimant appears to meet the requirements for the firs t half of the spinal d isorder list ed impairment. However, Claimant does not meet the second half of the listed impairment requirements.

Sections A and B of the above listing simply do not apply to Claimant's conditions. The undersigned considered the possibility that Claimant met the requirements for C.

Lumbar spinal stenosis was established. There was also substantial testimony concerning Claimant's ability to walk. There was no medical ever idence that Claimant suffers from pseudoclaudication. Thus, Cla imant does not meet the requirements for the musculoskeletal impairment.

The undersigned did not c onsider any other potential listings. Accordingly, Claimant is not found disabled at step three and the disability analysis must proceed to step four.

The fourth step in analyzing a dis ability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CF R 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id*.

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful ac tivity and t hat last ed long enough for the indi vidual to learn the position. 20 CFR 416.960(b)(1). Vocati onal factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national econom y is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related sympt oms, such as pain, whic h may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a t ime and oc casionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one whic h involves sitting, a certain amount of walking and standing is often necessa ry in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds . 20 CFR 416.967(b). Even though we ight lifted may be very little, a job is i n 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dex terity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects w eighing up to 25 pounds. 20 CFR 416.967(c). An individua I capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no m ore than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416. 967(d). An indiv idual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involv es lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objec ts weighing 50 pounds or more. 20 CFR 416.967(e). An individual capab le of very heavy work is able to perform work under all categories. *Id*.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficult y maintaining attention or conc entration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work setti ngs (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or po stural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CF R 416.969a(c)(1)(i)-(vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspec ts of work-related activities, the rules in Appendix 2 do not direc t factual conc lusions of disabled or not dis abled. 20 CFR 416.969a(c)(2). The dete rmination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. Id.

Claimant's 15-year-old employm ent history consisted of only employment as a driver (see Exhibit 7). Claimant described his duties mostly as a driver but clarified that he was expected to drag cables and to move sliding dumpster doors. Claimant also testified that during the period when he was not driving, he was expected to assist in the cleaning of his workplace whic h might require lifting it ems such as tires. Based on Claimant's description of his previous work duties, the under signed is inclined to find that Claimant's duties fell under medium work.

Claimant's witness testified t hat Claimant "walks like a cr ipple". His walk ing was described as slow, hunch-back and often require s Claimant to hold onto tables or other objects to keep hims elf upright. The test imony tends to be supported by the medica I evidence describing Claimant 's degenerative dis c diseas e as "sev ere" and "deteriorating". The undersigned rejects Claim ant's ability to do light work based on the substantial standing and walkin g required. It is found that Claimant is capable of sedentary employment but not light work.

As Claimant's employment history involved medium work and Claimant is found limited to sedentary work, it is f ound that Claim ant is not c apable of performing his pas t employment. Thus, the disability analysis moves to step five.

In the fifth and final step of the disability analys is, an a ssessment of the indiv idual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, t he Claimant was set years, thus, considered to be at an advanced age. Claim ant has a high sc hool education and a work history of unskilled non-transferrable work. Disability is found if an individual is unable to adjust to other work. *Id.*

At the fifth step in the analysis, the burden shifts from Claimant to DHS to present proof that Claim ant has the residua I capacity to substantial gai nful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a voc ational expert is not r equired, a finding s upported by substantial evidence that the individual has the vocational qualific ations to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocationa I guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

Based on Cla imant's age work hi story (semi-skilled and non-transferable), education (12th grade) and limitation to sedentar y employment, the undersigned finds that Medical-Vocational Guid elines [20 CFR 404, Subpart P, Appendix II] Rule 201.06 controls. Medical-Vocational Ru le 201.06 directs a finding that Claimant is disabled. It is found that Claimant is disabled for purposes of MA benef its and that DHS improperly denied Claimant's application for MA benefits.

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the S DA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS polic ies for SDA are found in the Bridges Administrati ve Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financ ial assistance to dis abled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial as sistance to meet a disabled person's basic personal and shelter

needs. *Id*. To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant:

- Receives other specified disability -related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable t o work due to ment al or physical disabili ty for at least 90 days from the onset of the disability; or
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

The undersigned has already found Claimant to be disabled for purposes of MA benefits by finding that Claim ant has impairments expected to last one year or more. This finding makes Claimant automatically eligible for SDA benefits based on the lesser 90 day requirement. It is found that DHS improperly denied Claimant SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, finds that DHS improperly denied Claimant's application requesting SDA and MA benefits. It is ordered that DHS:

- (1) reregister Claimant's application dated 1/20/11 for MA and SDA benefits;
- (2) process Claimant's applic ation based on t he finding that Claimant is a dis abled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) schedule a redetermi nation dat e of 6/ 2012 if DHS determines Claimant to be eligible for MA or SDA benefits.

The actions taken by DHS are REVERSED.

Christian Gardocki

Christian Gardocki Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: July 7, 2011

Date Mailed: July 7, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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.

CG/cl

