

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 201128485
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
July 14, 2011
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on March 28, 2011. After due notice, a telephone hearing was held on Thursday, July 14, 2011. The Claimant personally appeared and provided testimony.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P), retroactive Medical Assistance (MA), and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

1. On October 28, 2010, the Claimant submitted an application for Medical Assistance and State Disability Assistance benefits alleging disability.
2. On March 9, 2011, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA).
3. On March 9, 2011, the Department sent the Claimant notice that it had denied the application for assistance.

4. On March 28, 2011, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. On May 2, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits stating that the Claimant retains the capacity to perform a wide range of light work.
6. An administrative hearing was held on Thursday, July 15, 2011.
7. The Claimant applied for federal Supplemental Security Income (SSI) benefits with the Social Security Administration (SSA).
8. The Claimant is a 39-year-old man whose birth date is February 7, 1972. The Claimant is 5' 7" tall and weighs 127 pounds. The Claimant is a high school graduate. The Claimant is able to read and write and does have basic math skills.
9. The Claimant has past relevant work experience as a machine operator on an assembly line from 1990 through 2010.
10. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
11. The Claimant alleges disability due to a gunshot wound to the left shoulder, severed tendons of the right hand, and hypertension.
12. The Claimant does not claim to have any mental impairment.
13. The Claimant received a low-velocity gunshot wound to the left shoulder on July 14, 2010, which did not fracture any bones, and he retains bullet fragments in and around the subacromial space.
14. The Claimant has normal range of shoulder motion, except that he has mild rotation deficit to 90° of abduction movement.
15. The Claimant reported that his shoulder is good, that suffers from pain infrequently, and he essentially is back to his routine function four month's after the gunshot wound to his shoulder.
16. The Claimant received a gunshot wound and knife wound in 1988 to his right hand causing laceration to the flexor tendons of his right hand. The Claimant's grip strength is intact and has full dexterity, but he lost all range of motion to his third, fourth, and fifth distal interphalangeal joints.
17. The Claimant was diagnosed with hypertension in July of 2010, which is under control due to treatment with Hydrochlorothiazide and a reduced sodium diet.

18. The Claimant exhibits a normal gait and does not require any assistive devices for ambulation.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (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 Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (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).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit the Claimant's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

Medical evidence includes:

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) Symptoms are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from your

statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

(c) Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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 Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, the Claimant is not engaged in substantial gainful activity and has not worked since June of 2010. The Claimant is not disqualified from receiving disability at Step 1.

At Step 2, the Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months.

The Claimant alleges disability due to severed tendons of the right hand, a gunshot wound to the left shoulder, and hypertension.

The Claimant does not allege any mental impairments.

The Claimant received a low-velocity gunshot wound to the left shoulder on July 14, 2010, which did not fracture any bones. The Claimant retains bullet fragments in and around the subacromial space that is less of an acute situation than if they were imbedded in the joint. The Claimant has normal range of shoulder motion, except that he has mild rotation deficit, which has been reduced to 90° of abduction movement.

The Claimant submitted a medical report that concludes that he is unable to lift anything over five pounds with his left arm due to the injury to his shoulder. This conclusion is not supported by objective medical evidence or laboratory data to support the doctor's opinion of the Claimant's physical limitations.

The objective medical evidence concludes that the Claimant's shoulder has returned to essentially routine functioning without any significant pain. During the examination of the Claimant used to make these conclusions, the Claimant stated that his shoulder is good, that he suffers from pain infrequently, and that he essentially is back to his routine functions.

The flexor tendons of the Claimant's right hand were damaged in 1988. The objective medical evidence concludes that the Claimant has lost all range of motion to his third, fourth, and fifth distal interphalangeal joints. All other joints in his right hand have normal range of motion. Despite the loss of range of motion, the objective medical evidence indicates that his grip strength is intact and has full dexterity in his right hand.

The Claimant testified that he has been employed as a machine operator between 1990 and 2010, despite the injury to his right hand.

The Claimant was diagnosed with hypertension in July of 2010. The objective medical evidence indicates that the Claimant's hypertension is clinically controlled with hydrochlorothiazide and a reduced sodium diet. The objective medical evidence does not indicate that there has been any organ damage due to his hypertension.

The Claimant has failed to establish that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. The Claimant is not considered disabled at step 2.

If the Claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of the Claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

The injuries to the Claimant's shoulder and hand have not caused loss of function. The Claimant ambulates effectively and there are no medical findings of extreme loss of function. There are no medical findings that the Claimant has an inability to perform fine and gross movements. There are no medical signs or laboratory findings must showing the existence of a medically determinable impairment(s) that could reasonably be expected to produce pain severe enough to interfere with basic work activities.

The Claimant is not considered disabled at step 3 because his condition does not fit the description of a categorical listing of impairments in 20 CFR 404, Subpart P, App. 2 of the Social Security Administration regulations defining disability.

If the Claimant had not already been denied at Step 3, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could

base a finding that the Claimant is unable to perform work in which he has engaged in the past.

The Claimant failed to present objective medical evidence that his is not capable of performing work similar to his past work history. The Claimant has past work experience as a machine operator on an assembly line where he was required to guide automotive part to and from a machine press.

The Claimant has maintained employment in the past despite the injury to his hand.

The Claimant exhibits a normal gait and does not require any assistive devices for ambulation. The objective medical evidence indicates that he has intact grip strength despite the loss of some range of motion of his right hand. The objective medical evidence concludes that the Claimant has mild rotation deficit of his left shoulder, but the wound has healed to the point where he was essentially back to his routine function four month's after the gunshot. Therefore, if the Claimant had not already been denied, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has a Residual Functional Capacity (RFC) for Substantial Gainful Activity (SGA).

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 [REDACTED], published by the [REDACTED]... 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).

Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and off bearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do light or sedentary tasks if demanded of him. The Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments for a period of 12 months. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant was oriented to time, person and place during the hearing. The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record establishes that the Claimant has a Residual Functional Capacity (RFC) for Substantial Gainful Activity (SGA).

Under the Medical-Vocational guidelines, a younger individual (age 39), with a high school education and an unskilled work history who is limited to light work is not considered disabled. The Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence shows that he can perform light or sedentary work even with his impairments.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that the Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied the Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The Claimant should be able to perform a wide range of light or sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is AFFIRMED.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 26, 2011

Date Mailed: July 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 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.

KS/tg

cc:

