

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-28907

Issue No: 2009; 4031

[REDACTED]

[REDACTED]

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on April 5, 2011. After due notice, an in-person hearing was held on July 7, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) 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 September 22, 2010, Claimant applied for MA-P and SDA benefits.
- (2) On March 11, 2011, the Medical Review Team (MRT) denied Claimant's application for SDA stating that Claimant's physical impairment will not prevent employment for 90 days or more. MRT denied Claimant's MA application stating Claimant is capable of performing other work.
- (3) On March 24, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On April 5, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On May 5, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits stating Claimant retains the residual functional capacity to perform light work per 20 CFR 416.967(b).
- (6) Claimant has a history of back pain, knee pain, arthritis, degenerative joint disease, lumbar myositis, degenerative disc disease of the lumbar spine, lumbar paraspinal pain, hypertension, chronic alcoholism, and tobacco abuse.
- (7) Claimant was seen at the Valley Medical Center by his own doctor for lower back and knee pain from July 7, 2010 to November 9, 2010. Based on multiple musculoskeletal lumbar examinations, Claimant had no difficulty walking or standing. Inspection of his lumbar spine found symmetrical without defects, tenderness, masses or effusions. Decreased range of motion of lumbar spine, positive muscle spasms, no neurological deficits, no dislocation, subluxation or laxity noted. No dislocation, subluxation or laxity noted in either lower extremity. Claimant's right and lower extremities had normal range of motion without pain, crepitation or contracture. Claimant was noted to be a non-compliant patient regarding repeated medical advice to quit smoking and lose weight.
- (8) On July 7, 2010, Claimant was noted to have decreased range of motion in his right hand, however on July 30, 2011, Claimant denied joint swelling.
- (9) On July 30, 2010 the doctor observed Claimant had shortness of breath with exertion and wheezing and rhonchi. Exams performed subsequent to this visit continued to find wheezing and rhonchi.
- (10) Claimant's chest x-ray on July 30, 2010, showed increase in retro sternal space and retro cardiac space. Mild cardiac enlargement atherosclerotic changes to the descending aorta osteoarthritic changes to the thoracic spine.
- (11) On July 30, 2010, the x-ray of Claimant's lumbar spine was examined in multiple projections and showed no signs of ancient or recent fracture with normal osseous and articular anatomy throughout. The intervertebral spacing appears to be well preserved throughout. There is a minute anterior spur formation at L3, L4, and L5. There is minimal narrowing of the facet joints at the mid and lower lumbar spine. Mild degenerative arthritis of the lumbar spine.
- (12) On August 3, 2010, a Pulmonary Function Test was performed on Claimant. Testing both premed and post-med indicates normal spirometry.

- (13) On August 28, 2010, Claimant received an Electromyography Examination. The nerve conduction study of the bilateral extremities is normal. There is no electrodiagnostic evidence at this time for a peripheral nerve entrapment, large fiber neuropathy, plexopathy or radiculopathy.
- (14) On September 22, 2010, Claimant's lab work was evaluated, and Claimant was found to have a decreased range of motion in the lower extremities, and crepitus in each knee.
- (15) On November 17, 2010, Claimant was evaluated at the Pain Management Center in Flint. The Consult noted that an MRI of the lumbar spine dated 2/10/10 was read by a radiologist to show mild circumferential bulging of the discs with mild narrowing of the neuro foramina at L4-5 and L5-S1 with mild facet degenerative changes from L3 through S1. There was no evidence of disc herniation or stenosis. On physical examination, he is alert, oriented and appears uncomfortable on movement. There are paravertebral muscle spasm and tenderness in the lower lumbar area. There is bilateral sacroiliac joint tenderness. There is no sciatic notch tenderness. Deep tendon reflexes were symmetrical in the patellar and Achilles areas. Motor strength testing of the lower extremities is symmetrical. Straight-leg-raising was negative bilaterally. Claimant has no sciatic stretch signs and the MRI findings are fairly unspecific. He does have clinical evidence of bilateral sacroilitis, and a series of fluoroscopically-guided sacroiliac joint injections are recommended.
- (16) On December 27, 2010, Claimant's Psychologist evaluation found Claimant's gross motor functioning was intact with no overt physical discomfort although he complained of back pain. Claimant's demonstrated affect was depressed with reports of current suicidal feelings and an attempted overdose one year ago. There was a possibility of malingering at times on the sensorium and mental capacity of the evaluation. He described his general mood as depressed since childhood with current suicidal feelings and an attempted overdose about a year ago that was thwarted by intervention. However, Claimant denied any mental problems during the hearing and denied depression during medical evaluations on July 7, 2010, July 30 2010, August 17, 2010 and October 22, 2010.
- (17) Claimant was also evaluated by a psychiatrist at the Michigan Disability Determination Service on June 16, 2009. The psychiatrist stated in his report, "because it was my impression that W (Claimant) was exaggerating his symptoms during the testing today, the Dot Counting Test was administered. W's E-Score of 22 is suggestive of underrepresentation of his abilities and is found in persons engaging in embellishment or symptoms magnification. It is my impression that W's

mental abilities to understand, remember and carry out instructions are not impaired. W reported always having had learning problems. No test scores were available to me at the time of this exam, but it was not my impression that his learning problems would significantly interfere with completion of unskilled work. W's abilities to respond appropriately to co-workers and supervisors and to adapt to change and stress in the workplace are not impaired. Overall, based on today's exam and all the information available to me at this time, it is my impression that W's psychological condition would not impair his ability to perform work related activities." Axis I: History of Alcohol Dependence; Axis II: V71.09, No Diagnosis on Axis II. Axis III: Asthma, back pain (per W); Axis IV: Psychosocial.

- (18) On December 11, 2009, Claimant was referred by Community Mental Health to New Passages for a psychiatric evaluation. Claimant was admitted and treated for depression and suicidal thoughts. Claimant had attempted suicide by overdose three months prior. Claimant was discharged on December 15, 2009.
- (19) On March 31, 2009, Claimant was examined by a medical doctor for a DHS disability determination. Claimant stated he has had low back pain for 15 years. It radiates from the lower back into the left posterior hip area. He states it is worse with bending or lifting. He has not seen a physician about it. His hands swell off and on. His gait was slow without aid. There was no difficulty getting on and off the examining table. There was no incoordination. Straight leg raising was 90 degrees, bilaterally, sitting and lying. He was able to walk on his heels and toes and perform a half squat. Diagnosed with low back pain and chronic bronchial asthma.
- (20) On January 31, 2011, Claimant was evaluated by MRT. Claimant's chief complaint was back pain which radiates down both sides of the leg. During his physical exam, he appeared to be in no distress and cooperative but very slow movement during his exam. In general, Claimant's gait was very slow. The doctor thought Claimant did not make an effort to do anything. Claimant showed some weakness on both sides of his lower extremity and painful range of motion. Claimant's range of motion tests showed he was in the normal range on his lumbar spine and knee flexion. He was assessed with chronic back pain and knee pain.
- (21) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 206 lbs. Claimant dropped out of school in the ninth grade after participating in special education programming from elementary school. He enrolled in adult education but did not complete his GED.

- (22) Claimant states that he last worked in 2007 at [REDACTED] as a cook. Claimant told his psychologist in December 2010, that his longest job involved a 6-month period with [REDACTED] in 2008. Prior to that, he worked in different small factory settings for a few months each and performed janitorial work at [REDACTED] mall for 2 weeks.
- (23) Claimant has applied for Social Security disability and he had requested a hearing for an SSI benefits denial at the time of 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 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 Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

A set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and

regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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 reports should include –

- (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).

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).

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).

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

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do

his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he has not worked since 2007. However, Claimant told his psychologist, he last worked in 2008. Despite the conflicting information, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with mild degenerative arthritis of the lumbar spine based on an x-ray showing a minute anterior spur formation at L3, L4 and L5. An MRI of Claimant's lumbar spine showed mild circumferential bulging of the discs with mild narrowing of the neuro foramina at L4-5 and L5-S1 with mild facet degenerative changes from L3 through 1. There were paravertebral muscle spasms and bilateral sacroiliac joint tenderness. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter Claimant had lower back problems which would affect his ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

At Step 3 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 Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment.

Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment was working at Kentucky Fried Chicken for six months. At Step 4, the objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent him from performing the duties required from his past relevant employment for 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

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).

At Step 5, the burden of proof shifts to the department to establish that Claimant has the residual functional capacity to do substantial gainful activity. 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. See discussion at Step 2 above. Findings of Fact 6-11, 13-22.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light work duties. Claimant alleges he suffers from pain in his back and hands. Claimant stated that his right hand is swollen and stays swollen. Claimant denied any mental problems. Claimant states he lives with his son. Claimant has a driver's license with one previous arrest for drinking and driving in 2005. Claimant states he is unable to read or write. Claimant describes his typical day as waking his son up and asking him what he wants to do today. Then he watches his son ride his bike and they play X-box together for 30-35 minutes. Claimant is able to cook sometimes, but usually makes sandwiches and on a good day he can wash dishes.

During the examinations performed by his own doctor, Claimant was continually found to have no difficulty walking or standing. His lumbar spine is symmetrical without defects, tenderness, masses or effusions. He has no neurological deficits, no dislocation, subluxation or laxity of his lumbar spine. Claimant's right and lower extremities also have a normal range of motion without pain, crepitation or contracture. An Electromyography examination showed no electrodiagnostic evidence of peripheral nerve entrapment, large fiber neuropathy, plexopathy or radiculopathy. The MRI showed no evidence of disc herniation or stenosis. Claimant has no sciatic stretch signs and the MRI findings are fairly unspecific. In fact, according to his own doctor, Claimant is a non-compliant patient, ignoring advice to lose weight and stop smoking. During Claimant's physical exam in January 2011, the doctor noted that Claimant did not make an effort to do anything and Claimant's range of motion tests showed he is in the normal range on his lumbar spine and knee flexion. In addition, the psychologist evaluating Claimant in December 2010, stated there was a possibility of malingering by Claimant on the sensorium and mental capacity evaluation. This is consistent with Claimant's evaluation by a psychiatrist in June 2009 who believed Claimant was exaggerating his symptoms and gave Claimant a test which showed that Claimant was in fact under-representing his abilities and magnifying his symptoms.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows he can perform light work. Under the Medical-Vocational guidelines, an individual age 18 - 44 (Claimant is 39 years of age), with limited education (Claimant completed ninth grade) and an unskilled or limited history who can perform only light work is not considered disabled pursuant to Medical-Vocational Rule 202.17.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's

claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either

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 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 Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

_____/s/_____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/20/11

Date Mailed: 7/20/11

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.

VLA/ds

■ [REDACTED]