


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

IN THE MATTER OF:



Reg. No: 2011-44186
Issue No: 2009/4031
Case No: 
Hearing Date:
October 27, 2011
Berrien 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. After due notice, a telephone hearing was held on October 27, 2011. Claimant personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On January 4, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for 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 April 27, 2011, Claimant filed an application for SDA benefits alleging disability.
- (2) On June 30, 2011, the Medical Review Team (MRT) denied Claimant's application for SDA indicating that Claimant's physical impairments will not prevent employment for at least 90 consecutive days.
- (3) On July 5, 2011, the department sent out notice to Claimant that his application for Medicaid had been denied.

- (4) On July 18, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 30, 2011, the State Hearing Review Team (SHRT) upheld the denial of SDA benefits indicating Claimant retains the capacity to perform light work. (Department Exhibit B, pages 1-2).
- (6) On January 4, 2012, the State Hearing Review Team (SHRT) upheld the denial of SDA benefits indicating Claimant retains the capacity to perform light work. (Department Exhibit C, pages 1-2).
- (7) Claimant has a history of asthma, lumbar radiculopathy, migraines, depression, anxiety, mental retardation, sarcoidosis, acute bronchitis, and hypertension.
- (8) On September 1, 2009, Claimant's doctor wrote that he has continued to treat Claimant for injuries suffered in motor vehicle accidents on 5/11/84 and 3/24/97. He was treating Claimant for chronic low back pain with lumbar radiculopathy, right and left knee pain, migraine headaches, right inguinal strain and right wrist pain. His physical exams were consistent with the diagnoses. Claimant's symptoms were serious enough to prevent him from doing his regular manual type labor. The symptoms interfered with his walking, standing, pushing, pulling and lifting. His doctor opined that Claimant was now disabled and unable to do his regular manual labor type work. (Department Exhibit A, p 27).
- (9) On June 9, 2010, a psychiatric evaluation was completed by the Michigan Disability Determination Service. Claimant presented as an anxious individual. He reported visual and auditory hallucinations, and it was quite rare for an individual to experience both kinds of diagnoses. His performance on the sensorium portion of the evaluation suggested either a significantly intellectually limited individual or an individual who was attempting to appear more emotionally or psychologically disabled than he actually was. However, in terms of his anxiety issues, his overall prognosis was considered poor. The psychiatrist opined Claimant was unable to manage his benefit funds and diagnosed him on Axis I: Anxiety Order (possible social anxiety), Cognitive Disorder (possible limited intellectual functioning); Axis V: GAF=48. (Department Exhibit A, pp 17-22).
- (10) On June 24, 2010, Claimant underwent a medical examination on behalf of the Disability Determination for Social Security Administration. He was diagnosed with back pain. This appeared to be a combination of musculoskeletal pain and degenerative disc disease. He complained of back pain with straight leg raising. Nerve root irritation of significance was

not observed. He did not require use of an assistive device to ambulate. No disorientation noted. (Department Exhibit A, pp 125-127).

- (11) On October 2, 2010, Claimant went to the emergency department for right shoulder pain and low back pain radiating to right leg pain. He had pain with range of motion and used a cane. Claimant was prescribed Vicodin and Xanax. (Department Exhibit A, pp 75-85).
- (12) On January 16, 2011, Claimant's doctor opined that Claimant was totally disabled and unable to work based on his injuries and subsequent disability from two motor vehicle accidents in November 1984 and in March 1997. His disability and deconditioning because of the chronic pain and his other problems had progressed to where he claims he can "not do any kind of jobs," including "sit down jobs." Claimant's doctor opined that because of Claimant's chronic pain, he would not be able to sit long enough to do the work. (Department Exhibit A, p 231).
- (13) On January 24, 2011, a chest x-ray showed moderate hilar adenopathy, right greater than left and possible mediastinal adenopathy. Diagnostic considerations included sarcoidosis, other inflammation, lymphoma, and metastasis. In absence of any prior chest radiograph for comparison, a CT chest was recommended. (Department Exhibit A, p 9).
- (14) On January 25, 2011, a CT Thorax of Claimant's chest showed extensive hilar and mediastinal adenopathy were present. This change was most likely caused by sarcoidosis. A few small scattered vague nodular densities could be seen within the lung fields. Some of these were probably on the basis of atelectasis. Other densities suggest an old inflammatory granulomatous process. (Department Exhibit A, p 6).
- (15) On April 14, 2011, an x-ray of Claimant's lumbosacral spine showed the vertebral bodies were normal. No significant disc space narrowing or appreciable sclerotic changes were seen. An x-ray of his knees showed no bony abnormality on either side. Definite arthritic changes were not noted and joint effusion was not demonstrated. (Department Exhibit A, pp 3-4).
- (16) On May 7, 2011, an MRI of Claimant's lumbar spine showed mild degenerative changes of the lumbar spine with mild diffuse disc bulges at L3-L4 and L4-L5 as well as mild facet hypertrophic changes at L5-S1. (Department Exhibit A, p 216).
- (17) On May 11, 2011, Claimant was evaluated by a psychiatrist. Claimant was alert, oriented and soft spoken. His affect was blunted. He reported anxiety with panic symptoms. He was moody, angry with people and wanted to hurt people. He hears people calling his name. He is very

nervous and always hides in his house. He did not seem to be psychotic, but definitely paranoid. He was made fun of growing up and never felt he fit into the groups, and his intellectual impairment did not really help. His motivation is questionable at this point. Axis I: Major depressive disorder, recurrent, severe, with psychotic features; anxiety disorder; Axis II: Mental Retardation, severity unspecified; Axis V: 25. (Department Exhibit A, pp 182-183).

- (18) On May 26, 2011, at the department's request, Claimant's doctor examined Claimant and opined that Claimant would not be able to participate in training and/or employment at a minimum of 20 hours a week and would not be able to return to work within 3 months due to his total disability. (Department Exhibit A, p 168).
- (19) On May 27, 2011, the results of Claimant's urine test were positive for benzodiazepines, cocaine, morphine and marijuana. (Department Exhibit A, pp 212-215).
- (20) On August 29, 2011, Claimant went to the emergency department complaining of back pain from a fall. He had a history of back problems. He described the pain as sharp, radiating upward, and he had numbness with weakness and tingling in his right leg. He had difficulty walking and decreased range of motion. He was diagnosed with a low back sprain and acute sciatica. An MRI from 5/11 showed moderate right foraminal narrowing at L4-L5. Claimant was prescribed Dilaudid, Phenergan, Valium, Motrin and Vicodin and released. (Department Exhibit A, pp 19-28).
- (21) On September 1, 2011, Claimant went to the emergency room complaining of back pain radiating down his leg after a fall. During the examination, Claimant had bilateral paraspinal tenderness and pain in back when lifting the legs bilaterally, but no shooting pain down the leg with a negative straight leg test. Claimant was given an injection of morphine, phenergran and valium. He was discharged home with Flexeril and Vicodin. (Department Exhibit A, p 233).
- (22) On September 9, 2011, Claimant saw his family doctor for low back pain radiating to right leg. He has had chronic back pain since 1997 and is trying to get disability for this. Tripped and hurt lower back on Saturday, not sure which Saturday. He went to the emergency room twice for pain control. He was given Norco, Percocet and Flexeril, but had no x-rays in the ER. He complains about low back pain radiating to the right groin and knee pain. Has numbness intermittently of right leg. He was using a cane to walk and support himself while standing. Unable to flex, extend or rotate due to pain. His doctor was unable to test his strength due to pain.

He moved all extremities and had an intermittent verbal/facial tic. (Department Exhibit A, pp 222-226).

- (23) On September 28, 2011, Claimant saw his family doctor complaining of chronic back pain. On examination, his continued low back pain was radiating to the groin and right leg. He also gets numbness and tingling in the right leg. He was walking with cane, and had intermittent numbness and tingling in the last 2 fingers of each hand. He exhibited tenderness to light touch on right paraspinal and spasm of right paraspinal. He was unable to flex, extend or rotate due to pain. His doctor was unable to test his strength due to pain. (Department Exhibit A, pp 218-219).
- (24) Claimant is a [REDACTED] whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 210 lbs. Claimant completed his GED.
- (25) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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 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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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 statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a).

Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(a).

Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. 20 CFR 416.929(c)(3).

Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account in reaching a conclusion as to whether you are disabled. 20 CFR 416.929(c)(3).

We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. 20 CFR 416.929(c)(3).

Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In Claimant's case, the ongoing back pain and other non-exertional symptoms he describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his testimony in this regard.

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 416.290(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).

Claimant has not been employed since 2005; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical limitations upon his ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20

CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents Claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings, that Claimant cannot return to his past relevant work because the rigors of cabinet building and operating a press are completely outside the scope of his physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact 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). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are a significant numbers of jobs in the national economy which Claimant could perform despite his limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his April 27, 2011 MA/retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's April 27, 2011 MA/Retro-MA and SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in February 2014, unless his Social Security Administration disability status is approved by that time.
3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

/s/ _____

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

Date Signed: 2/3/12 _____

Date Mailed: 2/3/12 _____

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]