

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-49713
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: November 30, 2011
DHS County: Wayne (82-31)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant Timothy Daniel's request for a hearing. After due notice, a telephone hearing was conducted on November 30, 2011, from Detroit, MI. Claimant appeared and testified at the hearing. Claimant's mother, [REDACTED], appeared and testified as a witness for Claimant. [REDACTED] appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant's disability meets the medical criteria for eligibility for Medical Assistance (MA, Medicaid), MA-retroactive and State Disability Assistance (SDA) benefits?

FINDINGS OF FACT

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

1. On November 5, 2010, Claimant applied for MA, MA-retroactive and SDA benefits.
2. On March 4, 2011, DHS determined Claimant was not disabled and denied his application.
3. On June 13, 2011, Claimant filed a Request for a Hearing with DHS.
4. Claimant's impairment is medically diagnosed as chronic left back shoulder pain.

5. Claimant's physical symptoms are chronic left upper back or shoulder pain and paralyzing numbness in cold temperatures.
6. Claimant is not currently in medical treatment due to a change of insurers. Claimant most recently treated on [REDACTED] examined x-rays and advised Claimant that he may have a muscle or other tear where he was struck on the left shoulder. Claimant has taken the following pain and other medications in the past: Vicodin (pain), Cymbalta, Seroquel, and Bupropion HCL (anxiety and depression), Lisinopril and Lopressor (high blood pressure), Trazodone (sleep), Metoclopramide (gastroesophageal reflux disorder - GERD), Bupropion Nitrosol (heart), and Prednisone (asthma). He takes six Advils a day, because he does not have a current treating physician to provide prescriptions for him.
7. Claimant intends to continue treatment with a new health care provider, [REDACTED].
8. Claimant's impairments have lasted for a continuous period of more than twelve months.
9. Claimant is 5'10" and weighs 160 lbs.
10. Claimant is 50 years old. His date of birth is [REDACTED].
11. Claimant graduated high school and attended [REDACTED] for two and one-half years.
12. Claimant can read, write, and perform basic math skills.
13. Claimant worked as a cook and construction worker. His last day worked was March 4, 2010.
14. Claimant testified to the following physical limitations:
 - Sitting: uncomfortable after ten minutes.
 - Standing: uncomfortable after twenty minutes.
 - Climbing, pulling, kneeling and carrying: unable to perform these functions.
 - Walking: uncomfortable after one block.
 - Lifting: no more than five lbs.
 - Pain: 10/10 without medication, 1-2/10 with medication.

15. Claimant is homeless and stays in a vacant house. There are a few chairs and no other furniture.
16. Claimant receives financial help from his mother, and DHS is providing Food Assistance Program and Adult Medical Program benefits to Claimant.
17. Claimant buys small bags of groceries such as small cans, bread and lunchmeat because he cannot carry more than that. He cannot vacuum, dust, and clean countertops. He can carry one dish to the sink, and he can do very little dishwashing, sweeping and laundry. He attempted yard work, using a rake, shovel and lawnmower, but it was too painful. His only daytime activity is reading.
18. Claimant's driver's license is expired, but he can otherwise drive a car. He has no means of transportation.
19. Claimant's sole hobby is reading. He can no longer enjoy his former hobbies: playing chess, drawing, listening to music and participating in martial arts.
20. Claimant smokes one pack of cigarettes a day.
21. Regarding activities of daily living, Claimant testified he gets up at 4:00 a.m., naps until 5-6:00 a.m., gets up at 7-8:00 a.m., prepares oatmeal, and stays up all day. He walks to church, and to friends' and relatives' houses, so he can be with other people.
22. Medical records examined are as follows:

[REDACTED]

23. Report reviewed:

[REDACTED]

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers MA pursuant to MCL 400.1 *et seq.*, and MCL 400.105. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference

Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

Federal regulations require that DHS must use the same operative definition for “disabled” as used by the Federal government for Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the finder of fact to follow a sequential evaluation process by which current work activity, the severity of impairment(s), residual functional capacity, and vocational factors (age, education, and work experience) are assessed, in that order. A determination that an individual is disabled can be made at any step. If the fact finder finds disability at a particular step in the process, it is not necessary to continue the evaluation through subsequent steps.

1. Current Substantial Gainful Activity

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 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 416.972(b). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the Federal regulations, it is presumed that she or he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she or he is not disabled regardless of how severe the physical and mental impairments are and regardless of age, education and work experience. If the individual is not engaged in SGA, the analysis proceeds to the second step.

In this case, Claimant has not worked since March 4, 2010. Therefore, I find that Claimant is not disqualified at the first step and I proceed to the second step of the MA analysis.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, an individual must have a “severe impairment.” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work

activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples 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, coworkers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking medical merit. The U.S. Sixth Circuit Court of Appeals, in *Salmi v Secretary of Health and Human Services*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* at 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir 1988); *Farris v Sec’y. of Health & Human Servs.*, 773 F2d 85, 90 (6th Cir 1985).

In this case, Claimant gave credible and un rebutted testimony that he has chronic back pain in the left shoulder area, which began when he was struck by his supervisor at [REDACTED]. He testified to marked limitations in his ability to lift, stand and sit, and total inability to rotate his shoulder, climb, pull, and kneel. Claimant gave credible and un rebutted testimony that his pain level is 10/10 without medication, and 1-2/10 with medication. [REDACTED] the Department’s evaluating physician, found decreased range of motion in the left arm and tenderness over the left shoulder blade. Claimant treated with [REDACTED] [REDACTED] for his back. He used heat and ice treatment and took muscle relaxants. Claimant testified that based on his [REDACTED], a colleague of [REDACTED], advised him he probably has a tear in the left shoulder where he was struck.

Claimant gave credible and un rebutted testimony that at the present time, he does little or no cooking, he does minimal grocery shopping for small items only, he cannot perform yard work, he cannot continue his many hobbies, and is confined basically to reading and visiting. Furthermore, he can walk only one block, he can stand for only twenty minutes, and he cannot carry things with his left arm.

In addition, Claimant takes six Advils per day to relieve pain, as he is not currently under the care of a personal physician and has no prescriptions.

Based upon the findings of fact and conclusions of law above, I find and conclude that Claimant's testimony, including his testimony about medical treatment and the use of prescription and nonprescription drugs, establishes that Claimant has physical impairments that have more than a minimal effect on basic work activities, and Claimant's physical impairments have lasted for more than twelve months.

3. Listed Impairment

After reviewing the criteria of CFR Title 20, Appendix 1 to Subpart P of Part 404 – Listing of Impairments, Listing 1.02, *Major dysfunction of a joint(s) (due to any cause)*, the undersigned finds that Claimant's medical records substantiate that the Claimant's medical impairments meet or are medically equivalent to the listed requirements. 20 CFR 404 §1.02 describes Major Joint Dysfunction as follows:

1.02 *Major dysfunction of a joint(s)(due to any cause)*: Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s).
With:

- A. Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
- or
- B. Involvement of one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

20 CFR 404, Appendix 1 to Subpart P, Listing of Impairments, Sec. 1.02, p. 9.

In this case, Claimant has a shoulder injury, possibly a muscle tissue or other tear, which causes significant back pain. Claimant has difficulty standing, sitting, walking, lifting, carrying, climbing, pulling and kneeling. Claimant has been under the care of a physician in the past year.

I have considered all of the testimony and evidence in this case as a whole in reaching my decision. Claimant had medical attention over the past year, he took prescription medication on an ongoing basis when it was available, and as it is not currently

available to him, he regularly uses significant amounts of over-the-counter pain medication. Also, I find and determine that Claimant's testimony and medical history are consistent with the medical treatment he has undergone, and I accept his testimony.

I note at this point that there are no records of Claimant's medical treatment in 2011 in the record, but I accept his credible and un rebutted testimony regarding his medical treatment. I took this into consideration in making my decision, as required by 20 CFR 404, Subpart P, Appendix 1, Section 1.00H, Documentation-When there is no record of ongoing treatment:

Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the current objective medical evidence and other available evidence, taking into consideration the individual's medical history, symptoms, and medical source opinions. Even though an individual who does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled based on consideration of his or her residual functional capacity (RFC) and age, education and work experience. 20 CFR 404, Subpart P, Appendix 1, Sec. 1.00H.

Considering all of the above, and including Claimant's age, education and work experience, the undersigned finds the medical reports, Claimant's history and his testimony substantiate that Claimant's orthopedic impairments meet or are medically equivalent to the listing requirements of 1.02(B). In this case, this Administrative Law Judge finds Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As Claimant is disabled, there is no need to evaluate Claimant with regard to the fourth or fifth steps.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under Federal SSI disability standards. This Administrative Law Judge finds Claimant is disabled for purposes of the MA program of the State of Michigan. The Department's denial of benefits is REVERSED.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies are found in BAM, BEM and RFT.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness, or the receipt of MA

benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as claimant has been found disabled for purposes of MA, he must also be found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled from all work as of November 5, 2010, that he is eligible for MA and retroactive MA benefits, and he is also eligible for SDA benefits. The Department's denial of these benefits to Claimant is REVERSED.

Furthermore, the Department is ordered to:

1. Initiate procedures to review Claimant's November 5, 2010, application, if not done previously, to determine Claimant's nonmedical eligibility for MA, MA-retroactive and SDA;
2. Initiate procedures to inform Claimant of its determination in writing;
3. Initiate procedures to schedule a case review no earlier than January, 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 7, 2011

Date Mailed: December 7, 2011

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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

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

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JL/pf

cc:

