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

IN THE MATTER OF:



Reg. No: 2011-50346 Issue No: 2009; 4031 Case No:

Hearing Date:

November 17, 2011

Genesee County DHS (05)

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, at elephone hearing was held on November 17, 2011. Claimant personally appeared and testified.

<u>ISSUE</u>

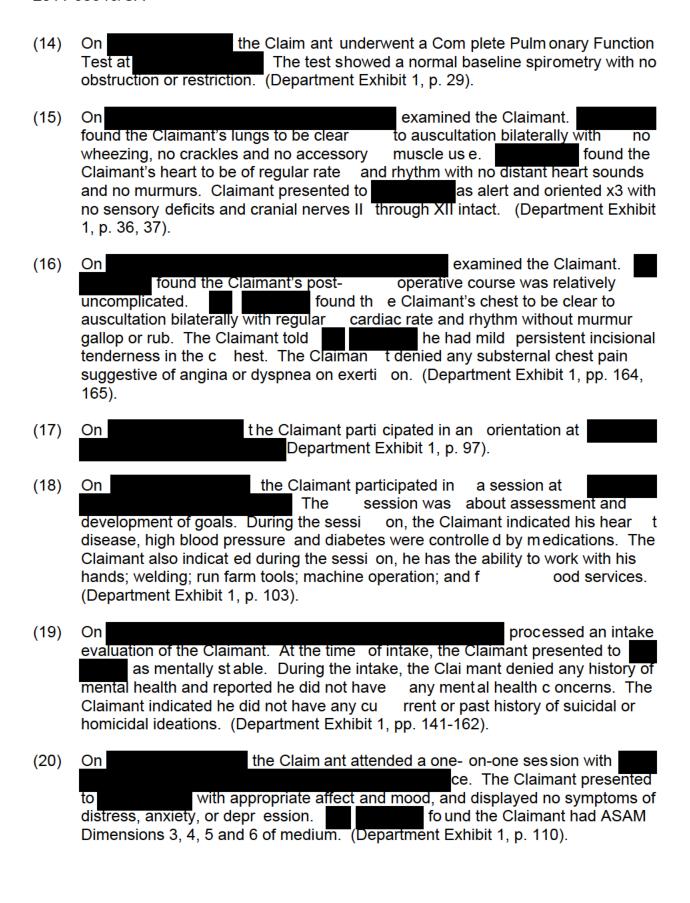
Whether the Department of Human Services (Department) properly denied Claimant's application for Medical Assist ance (MA-P), Retro-Medicaid and State Disab ility Assistance (SDA)?

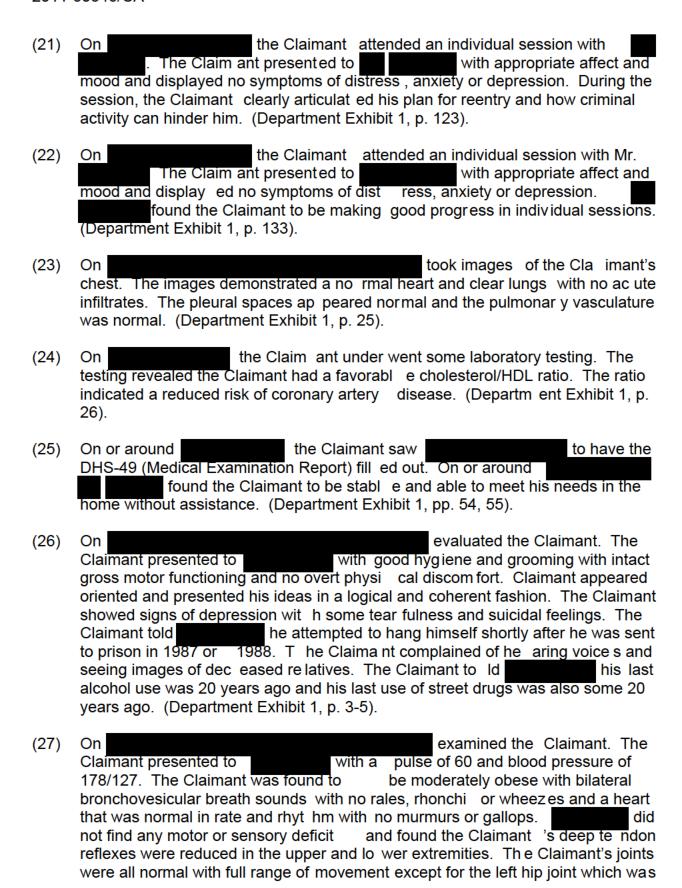
FINDINGS OF FACT

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

- (1) On Claim and Glaim and filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On the second the Medical Re view Team (MRT) denied Claimant's application for SDA stating Claimant's physical impairment will not prevent employment for 90 days or more. MRT denied Claimant's MA application based on insufficient evidence t hat Claimant had a severe impairment preventing him from employment for at least 12 months. (Department Exhibit 1, pp. 1-2).
- (3) On the Department's ent Claimant notice that his application was denied.
- (4) On the Claimant fil ed a request for a hearing to contest the Department's negative action.

- (5) On the State Hear ing Review Team (SHRT) again denied Claimant's application stating Claimant's impairments do not meet/equal the intent or severity of a Social Security Listing and the Claimant retains the residual functional capacity to perform a wide rang e of light work and unskilled work. (Department Exhibit 2 pp. 1, 2).
- (6) Claimant alleges he is disabled due to diabetes, anxiety, hypertension, and bipolar disorder.
- (7) From the Claim and has been incarcerated for armed robbery. Prior to being incarcerated, the Claimant worked as a welder, security guard and custodian. (Department Exhibit 1, pp. 5).
- (8) Claimant is a year old man whose birthday is tall and weighs 195 lbs. Cla imant has a high school di ploma and has taken one year of classes at Jordan College. While in prison, Claimant became certified in culinary arts, custodial ma intenance and legal research. (Department Exhibit 1, p. 103).
- (9) In the Claimant had a percutaneous transluminal coronary angioplasty with two stent placement. The Claimant reported to be generally chest pain free afterwards. (Department Exhibit 1, p. 187).
- the Claimant had a left knee meni scal repair. (Department Exhibit 1, p. 188).
- (11) On study of Claimant's heart. The test revealed a maximum heart rate that was well below 85% of the patient's predicted ma ximum. In additional found the Claimant had left ventricular hypertrophy with a borderline ejection fraction and hypokinesis to part of the septum. (Department Exhibit 1, p. 213, 214).
- (12) On the Claimant pr esented to discomfort that was becoming more severe. Myocardial infarction was ruled out. A cardiac catheterization was administer ed which r evealed 100% circumflex stenosis, 80% LAD and multiple RCA lesi ons. An echocardiogr am showed an ejection fraction of 54%. (Department Exhibit 1, p. 31).
- (13) On the Claimant underwent a corona ry artery bypass grafting x3 utilizing the left internal mammary artery bypass to the left anterior descending coronary artery and individual reverse saphe nous vein graft to the right coron ary artery and obtuse marginals as well as an endoscopic vein harvesting from the left lower extremity. (Department Exhibit 1, p. 39).





tender to manipulation and also the left knee joint with reduced movements.

found the Claimant's fine and gross dex terity in both upper extremities as well as grip with both hands was normal. (Department Exhibit 2, pp. 5, 6).

- (28) On _______ review ed bilateral images of the Claimant's knees. ______ concluded the Claim and had mild degener ative arthritic changes in his right knee jo int and mild to moder ate degree of degenerative arthritic changes in the left knee joint. (Departmen t Exhibit 2, p. 11).
- (29) Claimant has applied for Social Security disability and has been denied. At the time of the hearing, the Claimant was in the appeal process.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode 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 substant ial 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 whet her 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 signific and 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 de monstrated the ability to engage in SG A. (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 Judg e must determine whet her 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)). A n impairment or combination of impairments is "severe" within the meaning of the r egulations if it signific antly limits an individual's ability to perform basic work activities. An impair ment 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 laborator y findings which demons trate a medical impairment. 20 CFR 416.929(a).

Medical reports should include -

- (1) Medical history.
- (2) Clinical findings (suc h as the re sults of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of diseas e 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 with out 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 wa lking, 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 a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual 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 J udge must determine whether the Claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Par t 404, S ubpart P, Appendix 1. (20 CFR 4 04.1520(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 criter ia of a listing and meets the duration requirement, (20 CF R 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering st ep four of the sequential ev aluation process, the Administrative Law Judge must first determine the Claimant's residual functional capacity. (20 CF R 404.1520(e) and 416. 920(e)). An in dividual's residual functional capacity is his/he r 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 relev ant 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 wo rk must have lasted long enough for the

Claimant to learn to do t he job and have been SG A. (20 CFR 404. 1560(b), 404.1565, 416.960(b), and 416.965). If t he 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 las t step of the sequential ev aluation proc ess (20 CFR 404.15 20(g) and 416.920(g)), the Administrative Law Judge must determine whether the Claimant is able to do any other work considering his/her r esidual 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 decis ion about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other ev idence that support a medical source's statement of disability. 20 CFR 416.927(e).

At Step 1, I find the Claimant is not engaged in substantial gainful activity as he testified he has not worked since the receiving disability at Step 1.

At Step 2, I find the medical records and the Claimant's testimony at the hearing established the existence of diabetes, co ronary artery bypass grafting and mild degenerative arthritis of the knees. I do not find the Claimant's impair ments are "severe" within the meaning of the Regulations, because they do not significantly limit the Claimant's ability to perform basic work activities.

At Step 3, I find the Claimant's m edical record will not support a fi nding that Claimant's impairment(s) is a "listed impairment" or e qual to a listed impairment. Accordingly , Claimant cannot be found to be disabled ba sed upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, I find the objective medical evidence of record is not sufficient to establis h that Claim ant is prevented from performing the duties required from his past relevant employment. Accordingly, Claimant is disqualified from receiving disability at Step 4.

Although I have found the Claimant disqualified from receiving disability at Steps 2, 3 and 4, I 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 class ify 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 t han 10 pounds at a time and occasionally lifting or carrying articles lik e 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 wor k 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 categor y 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 we ighing 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 wor k. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects we ighing up to 50 pounds. If someone can do heavy wor k, we determine that he or she c an also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, I find the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light work duties. The record indicates the Claimant stopped working due to incarceration, rather than the alleged impairments. In addition, the medical records indicate the Claimant can participate in daily activities which are not limited to the extent one would expect, given the complaints of disabling symptoms and limitations. The medical documentation reflects the Claimant is able to take care of his own basic living needs (cleaning, cooking, and showering). Furthermore, while incarcerated the Claimant became certified in culinary arts, custodial maintenance and legal research.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impai rment or combination of impairments which would significantly limit the physical or mental ability to do bas ic 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 impa irment(s) are severe enough to reach the criteria and definition of disabled. Under the Medical-Vocational guidelines, an individual age (Claimant is vears of age), with high sc hool graduate or more (Claimant completed high school) and an unskilled or limited history who can pe rform light work is not considered disabled pursuant to Medical-Vo cational Rule 202.13.Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Dep artment's Bridges Eligib ility Manua I contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disable diperson or age 65 or older. BEM, Item 261, p. 1. Bec ause Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claiman t is unable to work for a per iod exceeding 90 days, the

Claimant does not meet the disability crit eria for State Disab ility Assistance benefits either

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

DECISION AND ORDER

I find, based upon the abov e findings of fact and conclusions of law, 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 and State Disability Assistance.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: December 7, 2011

Date Mailed: December 7, 2011

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely 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 <u>MAY</u> 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

Re consideration/Rehearing Request

P. O. Box 30639 Lansing, Michigan 48909-07322

CAA/cl

