

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-18543
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 5, 2011
DHS County: Genesee

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 [REDACTED] request for a hearing. After due notice, a telephone hearing was held on May 5, 2011. Claimant appeared and testified. [REDACTED], appeared and testified for the Department of Human Services (DHS). [REDACTED], was also present at the hearing.

ISSUE

Whether the Department denied Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) benefits to Claimant in accordance with its policies and procedures?

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 July 6, 2010, Claimant filed for SDA, MA, and MA-Retroactive benefits.
2. Claimant's impairments are medically diagnosed as cervical radiculopathy secondary to cervical disk disease, post-laminectomy chronic failed back syndrome, antalgic gait, chronic obstructive pulmonary disease moderately severe secondary to cigarette smoking (emphysema), migraine headaches with ophthalmoplegic component, major depression and bipolar disorder. Claimant uses the following medications: Flexeril, Neurontin, Elavil, Prozac, Xanax, Lamictal, Naprosyn, Fioricet, Wellbutrin, Midrin/Epidrin, Vicodin Extra-Strength, and albuterol inhaler. Claimant has lumbar back injections every three months,

and his next injection will be a neck injection due to the nerve damage in his left arm.

3. Claimant's physical symptoms are numbness in the right leg, the right leg "goes out" on him, he is losing use of his left arm, sleep disturbance and constantly wanting to be asleep, persistent constant pain, loss of eyesight, chronic cough, vomiting, severe depression, migraine headaches and noise intolerance.
4. Claimant's impairments will last or have lasted for a continuous period of at least 12 months.
5. Claimant is 5'9" tall and weighs 170 lbs.
6. Claimant is 46 years of age.
7. Claimant completed the ninth grade.
8. Claimant reads and writes at the fourth-grade level and performs basic math skills at the third-grade level.
9. Claimant was a heavy-truck mechanic for twenty-six years and was laid off in [REDACTED]. He worked on sixteen-speed engines. After he was laid off, he attempted to work at a machine shop, a remodeling store, and as a personal home care attendant. He failed to perform any of these jobs because he cannot lift and because he cannot read and write.
10. Claimant has no other prior employment experience.
11. Claimant testified to the following physical limitations:
 - Bending: Claimant is afraid to bend as his knees are "wiped out." He has had two knee surgeries.
 - Lifting: Claimant cannot lift weights.
 - Driving: Claimant has trouble driving.
 - Lying down: Claimant's left arm goes numb if he sleeps in bed. He sleeps in a recliner with a pillow between his legs in order to find a comfortable, less painful position.
12. Claimant's physician states he has the following limitations:
 - Sit, stand, bend, climb stairs: limited ability.

- Stoop, carry, push, pull, lift, squat and arise from squatting: no ability whatsoever.
 - Walking: walks with an antalgic gait, and has persistent pain with prolonged walking. He does not use a cane or other device.
 - Claimant's migraine headaches sometimes cripple him completely for 2-4 days.
13. Claimant lives alone.
14. Claimant shops for himself, but for no longer than fifteen minutes and only once a month. He cooks fast, easy foods. He does not perform many household chores and has to take breaks. He has a neighbor who helps him with the outside work sometimes.
15. On January 21, 2011, the DHS Medical Review Team found that Claimant was not disabled from other work, and denied his application for MA and SDA.
16. On January 31, 2011, Claimant filed a notice of hearing request with DHS.
17. On February 28, 2011, the DHS State Hearing Review Team denied Claimant's application for MA and SDA and found he was capable of a wide range of sedentary work.
18. The medical records examined are:

[REDACTED], Medical Examination Report, [REDACTED]

- Chronic obstructive pulmonary disease, moderately severe, secondary to cigarette smoking (emphysema).
- Migraine headaches with ophthalmoplegic component.
- Major depression.
- Bipolar disorder.
- Status post laminectomy now having chronic failed back syndrome.
- Cervical radiculopathy secondary to cervical disk disease.

[REDACTED], Psychological Examination Report, [REDACTED]

- Bipolar disorder (by history) with psycho-physiological features.

- Outpatient psychiatric treatment possibly with psychotropic medication is necessary for successful vocational rehabilitation.

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 the MA program 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 use the same operative definition for "disabled" as used by the federal government for Supplemental Security Income (SSI) determinations. It is found in 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 (i.e., age, education, and work experience) are assessed, in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. If the fact finder finds disability at a particular step in the process, then no evaluation under a subsequent step is necessary.

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 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 engaging in SGA, the analysis proceeds to the second step.

In this case, Claimant has not worked since [REDACTED]. Therefore, Claimant is not disqualified from receiving MA at the first step. I therefore proceed to the second step of the required analysis.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person 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) Capacity for seeing, hearing and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F.2d 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 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, Claimant has presented medical evidence of chronic obstructive pulmonary disease, migraine headaches, major depression, bipolar disorder, chronic failed back syndrome and cervical radiculopathy secondary to cervical disk disease. Claimant’s physician has imposed physical restrictions due to Claimant’s impairments. I find that this medical evidence establishes that Claimant has medically determinable physical

impairments that have more than a minimal effect on basic work activities, and they can be expected to last for at least twelve months.

3. Listed Impairment

After reviewing the criteria of listing 1.04, *Disorders of the Spine*, the undersigned finds that Claimant's medical records substantiate that Claimant's medical impairments meet or are medically equivalent to the listed requirements. 20 CFR 404 §1.04 describes Disorders of the Spine as follows:

Disorders of the Spine (e.g. herniated nucleus, pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disk disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours.

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00(B)(2)(b).

In the subject case, Claimant has chronic failed back syndrome which is causing low back pain, difficulty sitting, standing walking and lying down, and cervical radiculopathy due to cervical disk disease. Claimant has reduced sensation in his left arm and right leg, and his knees are unreliable.

Considering all of the above, the undersigned finds the Claimant's medical records substantiate that Claimant's medical impairments meet or are medically equivalent to the listed requirements of 1.04(A). In this case, this Administrative Law Judge finds Claimant is presently disabled at the third step for purposes of the MA program. As Claimant is disabled, there is no need to evaluate Claimant with regard to the fourth and

fifth steps. I find and determine that DHS is reversed and Claimant is eligible for MA and retroactive MA based on his application date of July 6, 2010.

Having reviewed Claimant's medical eligibility for MA, I now review his eligibility for SDA.

SDA provides cash assistance for disabled persons and was established by 1939 Michigan Public Acts 280. DHS administers SDA pursuant to MCL 400.1 *et seq.* and Michigan Administrative Code Rules 400.3151-400.3180. DHS' policies are found in BAM, BEM and RFT. These manuals are available online at www.michigan.gov/dhs-manuals.

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 ninety days. Receipt of SSI or Retirement Survivors and Disability Insurance (RSDI) benefits based on disability or blindness or the receipt of MA benefits based on 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.

In this case, based on the findings of fact and conclusions of law above, I find and determine that there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds Claimant is disabled for purposes of SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES DHS and decides and concludes that Claimant is medically disabled from all work as of July 6, 2010. IT IS HEREBY ORDERED that DHS shall reinstate and reprocess Claimant's July 6, 2010, MA retroactive MA and SDA application.

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Furthermore, DHS is ordered to initiate a review of Claimant's July 6, 2010, application, if not done previously, to determine Claimant's non-medical eligibility for MA and SDA. DHS shall inform Claimant of its determination in writing. This case shall be reviewed in May 2012.



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

Date Signed: May 11, 2011

Date Mailed: May 16, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 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.

JL/pf

cc:

