

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

IN THE MATTER OF:



Reg. No: 2011-26944
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
July 14, 2011
Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 February 28, 2011. After due notice, an in-person hearing was held on July 14, 2011. Claimant's authorized representative personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P)?

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 February 18, 2010, Claimant applied for MA-P.
- (2) On November 23, 2010, the Medical Review Team (MRT) denied Claimant's MA application stating Claimant's non-severe impairment lacks the duration of 12 months and he is capable of performing other work pursuant to 20 CFR 416.920(f). (Department Exhibit A, pages 72-73).
- (3) On December 2, 2010, the department caseworker sent Claimant notice that his application was denied. (Department Exhibit A, pages 1-2).
- (4) On February 28, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 27, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits stating Claimant retains the residual functional capacity to perform light work. (Department Exhibit B, pages 1-2).
- (6) Claimant has a history of knee injury, insulin dependent diabetes mellitus, pneumonia, degenerative joint disease, neuropathy, hypertension, dyslipidemia and a learning disability.
- (7) On [REDACTED] Claimant completed physical therapy and the pain in his knee was increasing. The doctor determined that the area bothering Claimant was the lateral patellar area, not the lateral meniscus area, and he could be referred back to physical therapy. The doctor indicated Claimant could work, but with no stooping, no climbing, and lifting nothing over 30 pounds. (Department Exhibit A, page 3).
- (8) On [REDACTED] Claimant was diagnosed with a medial femoral condylar defect, torn lateral meniscus. An arthroscopy of his left knee with a lateral meniscectomy was performed. (Department Exhibit A, page 6).
- (9) On [REDACTED] Claimant was seen post lateral meniscectomy. Physical therapy was prescribed. (Department Exhibit A, page 7).
- (10) On [REDACTED] Claimant was seen on referral by an optometrist. Claimant has had diabetes for the past 17 years. His eye exam showed he has a corrected visual acuity of 20/20 in both eyes. The anterior segment exam is within normal limits. Dilated fundus examination reveals cup-to-disc ratios of 0.8 in the right eye and 0.7 in the left. The macula is flat without clinically significant macular edema. There are numerous microaneurysms noted in the posterior pole of each eye. The doctor assessed Claimant with diabetes with moderate to severe nonproliferative diabetic retinopathy in both eyes. Glaucoma suspect secondary to increased cup-to-disc ratio.
- (11) On [REDACTED] Claimant was seen for heartburn and prescribed [REDACTED] and [REDACTED] (Department Exhibit A, page 20).
- (12) On [REDACTED] the doctor examined Claimant and because he was fairly asymptomatic from his two left knee lateral meniscus resections, the doctor released Claimant to return to work. (Department Exhibit A, page 22).
- (13) On [REDACTED] Claimant saw his doctor complaining the vision in his left eye had worsened and he had been seeing spots since [REDACTED]. Claimant was referred to the ophthalmologist. (Department Exhibit A, page 26).

- (14) On [REDACTED] Claimant was treated for erectile dysfunction. (Department Exhibit A, page 27).
- (15) On [REDACTED] Claimant was treated for neuropathy in his feet and chronic left knee pain. (Department Exhibit A, page 29).
- (16) On [REDACTED] a medical examination was completed on Claimant showing left knee tenderness along the latent joint line and decreased sensation in feet consistent with neuropathy. Claimant had a history of arthroscopy with lateral meniscectomy twice. The doctor found Claimant able to work with physical limitations of never lifting more than 50 pounds, occasionally lifting 20 and 25 pounds and frequently able to lift 10 and less pounds. Claimant did not need assistive devices and had no mental limitations and could meet his needs at home. (Department Exhibit A, page 14).
- (17) On [REDACTED] Claimant was treated for a left ear infection at the urgent care and released. (Department Exhibit A, page 38).
- (18) On [REDACTED] Claimant was transported to the hospital by ambulance for evaluation of left ear pain. He was seen by urgent care earlier but had not filled the prescriptions. Claimant's vital signs were normal except a blood pressure of 142/88. Paper work from urgent care was reviewed and Claimant is being treated appropriately. Diagnosed with left otitis externa and instructed to fill the prescriptions he was given at the urgent care. (Department Exhibit A, pages 38-39).
- (19) On [REDACTED] Claimant was admitted to the hospital for chest pain, cough and shortness of breath. His diagnosis at the time of admission was pharyngitis, suspected viral pneumonia, systemic inflammatory response syndrome, otitis media, and diabetes mellitus type II. CTA of chest ruled out pulmonary embolus but showed bilateral infiltrates consistent with pneumonitis. He was treated with broad-spectrum parenteral antibiotics and IV corticosteroids. ENT consulted on the case and given difficulty managing oral secretions and throat and upper airway respiratory collapse, he underwent endotracheal intubation in the operating room and was mechanically ventilated for proximally 48 hours. Claimant is an insulin-dependent diabetic with a past history of degenerative joint disease, hypertension and degenerative meniscal disease. Because of this he is disabled. A psychiatric consultation was requested pursuant to when Claimant was found in the hallway naked and disoriented. Claimant has no mental health history and is currently residing at the city mission. The psychiatric assessment indicated Claimant's delirium, multifactorial infectious process as well as the prednisone and Dilaudid which he has been receiving for pain could all be contributing to a state of delirium. The primary management of this is

treatment of the underlying medical condition. History of alcohol abuse, no reported evidence of recent use and his liver function tests are normal. Claimant was diagnosed with suspected bacterial pneumonia, acute epiglottitis, resolved systemic inflammatory response syndrome, resolving encephalopathy and diabetes mellitus type II when discharged on [REDACTED] (Department Exhibit A, pages 32-37, 40-45).

- (20) On [REDACTED] Claimant was seen by his doctor and an exam showed decreased sensation to light touch on the fourth and fifth fingers of Claimant's left hand. (Department Exhibit A, page 48).
- (21) On [REDACTED] Claimant's advocate completed the social summary noting Claimant was seen in the emergency room on 2/8/10 for an ear infection and was hospitalized from 2/9/10 until 2/20/10 for bacterial pneumonia and systemic inflammatory response. Claimant continues to have difficulty with shortness of breath. He now uses an inhaler to aid his breathing. Claimant has undergone three surgeries on his knees to repair the damage. He continues to suffer from severe pain and stiffness in his knees. He cannot sit or stand for more than a few minutes. He has difficulty walking and uses a cane on really bad days. Claimant suffers from diabetes and finds it difficult to control when he is homeless and can only eat what is provided at the shelter. English is a second language. He has difficulty reading and writing in English. When speaking to him in English, things have to be explained to him in the simplest of terms for his comprehension. Claimant is disabled and unable to be gainfully employed at any of the very physical jobs he has done in the past. (Department Exhibit A, pages 63-64).
- (22) On [REDACTED] Claimant was seen because his fingers were getting numb. Claimant reported two fingers have been numb since his hospitalization in [REDACTED]. (Department Exhibit A, page 47).
- (23) Claimant is a homeless 51 year old man whose birthday is [REDACTED]. Claimant is 5'5" tall and weighs 190 lbs. Claimant completed the ninth grade and worked as a field worker for 7 years in 2006. Claimant's next job was in a factory in 2010 where he worked until he was laid off.
- (24) Claimant had applied for Social Security disability 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, it is unknown whether Claimant is engaged in substantial gainful activity because he did not attend the hearing. According to the documentation, Claimant has not worked since 2010. Therefore, 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 has left knee pain and insulin dependent diabetes and diabetic neuropathy. However, the record also indicates that Claimant is non-compliant because he repeatedly reports to see his doctor weeks after he has run out of medication. Claimant's noncompliance is more than likely complicated by the fact that Claimant is homeless. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds Claimant's current prescription medications are fully capable of adequate symptom management in this case, given the objective medical evidence presented. Nevertheless, Claimant's diagnosed left knee pain, diabetes and neuropathy meets the *de minimus* level of severity and duration required for further analysis.

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 seven years as a farm hand. He also worked for a month in a factory in 2010 before being laid off. 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 16, 21, 23.

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 trouble breathing, left knee pain and diabetes. On May 12, 2008, the doctor noted

that since Claimant was back on his medications, his blood sugar had decreased to the low 100's. On [REDACTED], after two knee surgeries and physical therapy, Claimant was asymptomatic and was released without restrictions to return to work. On [REDACTED] a medical examination of Claimant found he had left knee tenderness along the latent joint line and decreased sensation in feet consistent with neuropathy. He did not need assistive devices and could meet his own needs at home. However, the doctor noted Claimant had physical limitations where he could not lift more than 50 pounds, and only occasionally lift 20 and 25 pounds, but was able to frequently lift 10 pounds or less. Claimant's last medical visit was in September 2010, where he was complaining of numb fingers. Prior to the September doctor visit, Claimant saw a doctor in April 2010 with the same complaint, and prior to that he was hospitalized in [REDACTED] for pneumonia.

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 approaching advanced age (50-54), Claimant is 51 years of age, with a limited education (Claimant completed the ninth grade) and an unskilled work history is not considered disabled pursuant to Medical-Vocational Rule 202.10. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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/

Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 18, 2011

Date Mailed: August 19, 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.

SLM/ac

cc:

[REDACTED]