

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

IN THE MATTER OF:

[REDACTED]

Reg No: 2011-31403
Issue No: 2009

[REDACTED]

Oakland County DHS-02

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on June 15, 2011. The Claimant appeared and testified. The Claimant's Representative [REDACTED] was present at the hearing. [REDACTED] ES appeared on behalf of the Department.

ISSUE

Was the Department correct in denying Claimant's MA application?

FINDINGS OF FACT

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

1. Claimant applied for MA-P on November 18, 2009.
2. The Medical Review Team denied the application on January 20, 2010 and April 9, 2010.
3. Claimant filed a request for hearing on June 29, 2010 regarding the denial.
4. A hearing was held on June 15, 2011.
5. On May 16, 2011 the State Hearing Review Team denied the application because the Claimant's condition is improving or is

expected to improve within 12 months from the date of onset or surgery.

6. Claimant is 5'10" tall and weighs 210 pounds.
7. Claimant is [REDACTED] of age.
8. Claimant's impairments have been medically diagnosed as depression, post traumatic stress disorder, neck and back pain and chronic pain post gun shot wound.
9. Claimant has the following symptoms: dizziness, insomnia, neck and back pain, memory and concentration problems, and fatigue.
10. Claimant completed the 12th grade.
11. Claimant is able to read, write, and perform basic math skills.
12. Claimant is not currently working.
13. Claimant last worked as in construction.
14. Claimant lives with his father.
15. Claimant testified that he can perform some household chores.
16. The Claimant's limitations have lasted for 12 months or more.
17. Claimant takes the following prescribed medications
 1. Hydrocodone
 2. Zolpidem tartrate
 3. celexa
 4. klonopin
 5. Risperdal
18. Claimant testified to the following physical limitations:
 1. Sitting: 30 minutes
 2. Standing: 30 minutes
 3. Walking: couple blocks
 4. Bend/stoop limitations
 5. Lifting: 5-10 lbs
 6. Grip/grasp: no limitations

19. Claimant's treating physician [REDACTED] stated in a Medical Examination Report dated June 20, 2011 that Claimant can never lift less than 10 lbs., and can stand/walk less than 2 hours in an 8 hour day. This report also states that Claimant can do no reaching, pushing/pulling, fine manipulating with his left hand, or operate foot and leg controls.
20. Claimant was found to have a GAF of 45 in November 2010 by his treating psychiatrist [REDACTED].
21. New medical was submitted to the State Hearing Review Team and Claimant's application was again denied on July 20, 2011 because Claimant is capable of performing unskilled, light work.

CONCLUSIONS OF LAW

The Medical Assistance (MA-P) 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 administers the MA-P 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 Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Bridges Reference Manual (PRM).

The Department conforms to state statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.

- (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P 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.

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) 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 trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, claimant is not working. Therefore, claimant may not be disqualified for MA at this step in the sequential evaluation process.

Secondly, 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 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that she has significant physical and her limitations upon her ability to perform basic work activities such as her ability to sit, stand, and walk. 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). Listings 4.06 and 12.04 were considered.

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 and findings, that claimant is not capable of the physical requirements required by her past employment as a house cleaner. Claimant has presented the required medical data and evidence necessary to support a finding that she is not, at this point, capable of performing such work.

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 you 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.

In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claimant form 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 her limitations. 20 CFR 416.966.

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.... 20 CFR 416.945(a).

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).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

In this case, Claimant's treating physician [REDACTED] stated in a Medical Examination Report dated June 20, 2011 that Claimant can never lift less than 10 lbs. and can stand/walk less than 2 hours in an 8 hour day. This report also states that Claimant can do no reaching, pushing/pulling, fine manipulating with his left hand, or operate foot and leg controls. This assessment leads to the conclusion that Claimant cannot perform any job, even at the sedentary exertional level. These assessments are supported by the medical records in the file and Claimant's testimony at hearing.

After careful review of the medical evidence presented and Claimant's statements, and considering the Claimant in the most restrictive circumstances this Administrative Law Judge finds that Claimant would not be able to perform work on the sedentary level. Claimant credibly testified that he cannot do the requisite lifting and that the restrictions on his ability to stand and sit for more than 1 hour would preclude her from working even at the sedentary exertional level. Claimant's testimony and the observations of this Administrative Law Judge at hearing also support this assessment. Therefore, 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 2, 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 significant numbers of jobs in the national economy which the claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the definition of medically disabled under the Medical Assistance program as of November 2009.

Accordingly, Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the MA-P and retro MA, applications dated November 18, 2010, if it has not already done so, to determine if all other non medical eligibility criteria are met. The Department shall inform claimant **and** [REDACTED] **authorized representative** of its determination in writing. Assuming that Claimant is otherwise eligible for program benefits, the department shall review Claimant's continued eligibility for program benefits in July 2012.

Aaron McClintic

Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: _____ 7/26/11 _____

Date Mailed: _____ 7/26/11 _____

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 60 days of the filing of the original request.

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.

AM/ds

