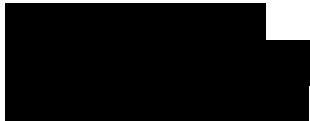


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:
Issue



Reg. No.: 2011-5049
No.: 2009
Case No.: [REDACTED]
Hearing Date: April 7, 2011
DHS County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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, a hearing was held on April 7, 2011.

ISSUE

Was the denial of claimant's application for MA-P for lack of disability correct?

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 and retroactive MA-P on June 9, 2010.
- (2) Claimant is currently 45 years old.
- (3) Claimant has an 11th grade education.
- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of manual labor.
- (6) Claimant performed these jobs at the medium and heavy exertional levels.
- (7) Claimant has a history of diverticular abscess.
- (8) This abscess resulted in an exploratory laparotomy with delayed closure of the wound.

- (9) Claimant currently has and uses a colostomy bag.
- (10) This bag significantly interferes with work-related activities.
- (11) Claimant has been placed on lifting restrictions, has some difficulty walking because of abdominal pain, and has trouble sitting for long periods due to the colostomy bag.
- (12) Claimant testified to infection problems relating to the bag.
- (13) Claimant's colostomy bag interferes with basic activities, and according to witness testimony, Claimant has trouble managing the bag in such a manner as to stop it from interference.
- (14) Claimant's colostomy bag can be a safety hazard during everyday activities.
- (15) On June 30, 2010, the Medical Review Team denied MA-P and retroactive MA-P, stating that Claimant's impairment did not meet durational requirements.
- (16) On October 29, 2010, Claimant filed for hearing.
- (17) On December 6, 2010, the State Hearing Review Team denied MA-P and retroactive MA-P, stating that Claimant's impairment did not have a significant impairment.
- (18) On April 7, 2011, a hearing was held before the Administrative Law Judge at the Wayne County Department of Human Services office, District 17.
- (19) Claimant was represented at the hearing by [REDACTED] of L&S Associates.

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 Bridges Reference Manual (BRM).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still participating in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2010 is \$1,640. For non-blind individuals, the monthly SGA amount for 2010 is \$1000.

In the current case, Claimant has testified that he is not working, and the Department has presented no evidence or allegations that Claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the Claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the Claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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 F.2d 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. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, Claimant has presented sufficient evidence of an abdominal injury to meet the requirements of this step. Claimant’s treating sources indicate that Claimant had an exploratory laparotomy that resulted in colostomy bag. This bag interferes with Claimant’s lifting and walking abilities. According to credible testimony, Claimant has had problems with infection, and the bag is a hindrance to performing basic activities. Therefore, as Claimant has presented evidence of limitations that have more than a minimal effect on Claimant’s ability to do basic work activities that meet the durational requirement, Claimant passes this step of the sequential evaluation.

In the third step of the sequential evaluation, we must determine if the Claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either Claimant’s impairment is severe enough to meet these listings, or it is not. However, at this step, a ruling against the Claimant does not direct a finding of “not disabled”; if the Claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the Claimant’s medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. The undersigned also considered the listings for gastrointestinal disorders in section 5.00. No listing remotely matched Claimant’s impairments.

Therefore, the Claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate Claimant’s vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the Claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual’s residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) the extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the Claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the Claimant's age, education and work experience and training will be made to determine if the Claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis— meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay

evidence, recorded observations, medical treating sources' statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, Claimant has been diagnosed with an abdominal infection and abscess that led to an exploratory laparotomy with colostomy. Claimant continues to have pain in the stomach, especially when walking. Claimant is unable to lift over 25 lbs. Claimant is unable to sit for long periods of time due to interference from the colostomy bag. Claimant's bag has been shown to interfere with daily activities by witness testimony, and Claimant is in danger of accidentally damaging or forcibly removing the bag if the bag gets caught on objects. Claimant has been placed on lifting restrictions by his doctors, according to credible testimony.

From these reports, the Administrative Law Judge concludes that Claimant has a disabling impairment when considering the functions of carrying, lifting, pushing and pulling. Claimant cannot reach or stretch. Claimant has some limitations in walking. Claimant cannot climb. Claimant cannot handle sharp objects, or move in narrow or constricting spaces. Claimant has no visual limitations or communicative (hearing, speaking) limitations.

Claimant's PRW includes manual labor performed at the medium and heavy levels. These jobs as typically performed and as described by the Claimant, involve walking for long periods of time. All of the jobs required lifting heavy objects on occasion. Some of these jobs required handling of sharp objects, reaching, pushing and pulling. Therefore, given the functional requirements as stated by Claimant (which is consistent with how these jobs are typically performed) for each of those jobs, and Claimant's functional limitations as described above, the Administrative Law Judge concludes that Claimant does not retain the capacity to perform his past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge 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 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 his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as “sedentary”, “light”, “medium”, “heavy”, and “very heavy”. These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (20 CFR 404, Appendix 2 to Subpart P, Section 200-204 et. seq) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with

all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations.

Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is currently 45-years-old, with an 11th grade education, and prior work experience performed at the heavy and medium exertional levels. Claimant's exertional impairments likely render Claimant able to perform work at the light level.

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. To be considered capable of performing a full or wide range of light work, a claimant must have the ability to do substantially all of these activities. If someone can do light work, it is usually assumed that he or she can also do sedentary work, unless

there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967.

Claimant has lifting restrictions in place. Claimant testified that he can lift no more than 25 lbs, which is consistent with the medical reports in his file. The undersigned finds this testimony credible. Furthermore, Claimant did not report any standing restrictions, and testified that he is unable to sit for long periods of time because of his colostomy bag. Claimant testified that he can do most activities of daily living. Claimant's limitations, as described, are consistent with light work.

That being said, even if Claimant was able to perform work, physically, at the light level, Claimant's ability to *perform* work at the light level in no way is a judgment of residual functional capacity. RFC is an assessment of an individual's ability to do **sustained** work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. The great weight of the evidence in the packet, including Claimant's own testimony and the testimony of Claimant's witness, all indicate that this would be next to impossible for a person suffering from the Claimant's particularly disabilities.

Furthermore, this is only a judgment of exertional limitations. The rules state that exertional limitations must first be considered to determine disability solely on strength factors; if those prove inconclusive, nonexertional limitations must be factored in to determine Claimant's true RFC.

Both the MRT and the SHRT evaluated Claimant solely on exertional factors; this determination did not take into account the full range of Claimant's limitations, and did not factor in at all Claimant's nonexertional limitations, as are required by the rules.

Claimant's nonexertional limitations, discussed above, are supported by the objective medical evidence. Starting with the basic assumption that Claimant's exertional limitations limit Claimant to light work, Claimant's nonexertional limitations stemming from Claimant's complaints of interference from his colostomy bag, render Claimant unable to engage in even a full range of sedentary work. Claimant's witness testified that Claimant is in constant danger of damaging his bag. This witness testified that Claimant could sustain work, but for the bag; this bag, due to infections, and the danger of catching on everyday objects and being ripped out, prevented Claimant from engaging in most activities. Therefore, after careful review of Claimant's medical records and the Administrative Law Judge's personal interaction with Claimant at the hearing, 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 F.2d 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 the 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 the Claimant is disabled for the purposes of the MA program. Therefore, the decisions to deny Claimant's application for MA-P were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

1. The Department is ORDERED to process Claimant's MA-P application and award required benefits, provided Claimant meets all non-medical standards as well.
2. The Department is further ORDERED to initiate a review of Claimant's disability case in July, 2012.



Robert Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 14, 2011
Date Mailed: July 14, 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.

RJC/cel
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