

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

IN THE MATTER OF:



Reg. No: 2011-53786
Issue No: 4031
Case No: [REDACTED]
Hearing Date:
December 15, 2011
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 September 8, 2011. After due notice, an in-person hearing was held on December 15, 2011. Claimant personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On February 6, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for State Disability 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 June 21, 2011, Claimant applied for SDA.
- (2) On August 19, 2011, the Medical Review Team (MRT) denied Claimant's SDA application indicating Claimant's physical or mental impairment does not prevent employment for 90 days or more. (Department Exhibit A, pp 1-2).
- (3) On August 24, 2011, the department caseworker sent Claimant notice that his application was denied.

- (4) On September 8, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On November 14, 2011, the State Hearing Review Team (SHRT) upheld the denial of SDA benefits due to Claimant's capacity to perform past relevant work. (Department Exhibit B, p 1).
- (6) On February 6, 2012, the State Hearing Review Team (SHRT) upheld the denial of SDA benefits due to Claimant's impairments would not preclude work activity for 90 days. (Department Exhibit C, p 1).
- (7) Claimant has a history of osteoarthritis, osteopenia, and chronic obstructive pulmonary disease (COPD).
- (8) On July 20, 2010, Claimant's chest CAT scan showed granulomatous disease of the left lung, mediastinum and spleen and severe fatty infiltration of the liver. The physician noted that Claimant's lungs showed small spots which may indicate old or current infection and he needed a pulmonary consultation. Claimant's chest x-ray showed evidence of granulomatous disease with a calcified granuloma at the left lung base, and calcified subcarinal lymph nodes. Portions of the upper abdomen images reveal granulomatous disease in the spleen, and severe fatty infiltration throughout the liver. (Department Exhibit A, pp 19, 22).
- (9) On January 12, 2011, an EAA dual energy x-ray absorptiometry study of Claimant's spine showed he had osteopenia in the lumbar spine and femoral neck. Claimant's physician noted the bone density test showed bone loss was nearly osteoporosis. (Department Exhibit A, pp 20-21).
- (10) On May 2, 2011, Claimant saw his physician for follow-up of his hypertension, COPD, fatty liver and osteoporosis with low back pain. His physician noted that he was unable to sit for any length of time and was unable to stand for long periods of time. His gait was normal and his strength was 5/5 in all extremities. Lungs revealed a wheeze throughout. His continued chronic medical problems were unchanged. (Claimant Exhibit A, p 2).
- (11) On July 7, 2011, Claimant saw his physician complaining of low back pain. His physician noted that Claimant's x-ray of his thoracic spine showed some wedging compression fractures in the T7-T8 region. (Claimant Exhibit A, p 4).
- (12) On July 8, 2011, Claimant's lumbar x-ray showed advanced spondylotic changes at L5-S1. (Claimant Exhibit A, p 5).

- (13) On July 21, 2011, Claimant saw his physician for follow-up of his chronic low back pain. His x-rays showed severe osteoarthritis with disc degeneration especially at L5-S1 as well as osteopenia. His pain was uncontrolled. His past medical history was significant for COPD, colon polyps in the past, hypertension, and alcoholic fatty liver disease as well as osteopenia. He also had a positive straight leg raise bilaterally for low back pain. His lumbar spine showed mild paraspinous muscle tenderness to palpation distal L-spine. Claimant was diagnosed with low back pain secondary to osteopenia with osteoarthritis and disc degeneration, hypertension and fatty liver disease. (Claimant Exhibit A, p 3).
- (14) On July 28, 2011, Claimant underwent a physical examination completed on behalf of the department. The examining physician noted Claimant had a slow antalgic gait and was suffering from low back pain, osteoarthritis, osteopenia and COPD, which were chronic ongoing illnesses. Claimant's physician noted Claimant would need to see his doctor 2-4 times a month for the rest of his life and would be unable to work at his usual occupation or any other job. (Department Exhibit A, pp 13-16).
- (15) On December 5, 2011, the MRI of Claimant's lumbar spine showed cholelithiasis. At L4-L5, there was mild disc bulging with a superimposed small proximal left foraminal disc protrusion and mild facet hypertrophy and ligamentum flavum thickening and mild proximal left foraminal stenosis. At L5-S1, the MRI revealed disc degeneration, severe disc height loss and moderate discogenic end-plate degeneration with Modic-type II change, mild disc bulging, moderate sized broad-based posterior central disc/osteophyte complex and moderate sized left foraminal disc protrusion, mild facet hypertrophy, and mild right and left foraminal stenosis. (Claimant Exhibit A, pp 6-7).
- (16) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 180 lbs. Claimant graduated from high school and completed a Bachelor of Art degree. Claimant last worked in October 2010.
- (17) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the

Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

"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. [SDA = 90 day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

The federal regulations require that several considerations be analyzed in sequential order:

. . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If

we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

. . . provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a).

The medical evidence . . . must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic technique. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (x-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds Claimant meets statutory disability on the basis of Medical/Vocation Grid Rule 201.06 as a guide, due to Claimant's advanced age, high school education or more and semi-skilled work history.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department erred in determining that Claimant was not disabled by SDA eligibility standards.

Accordingly, the department's decision is REVERSED, and this case is returned to the local office to determine whether Claimant met all the other financial and non-financial eligibility factors necessary to qualify for SDA.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/5/12 _____

Date Mailed: 3/5/12 _____

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.

VLA/ds

■ [REDACTED]