

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

IN THE MATTER OF:



Reg. No: 201154903
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: December 22, 2011
Monroe County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on September 21, 2011. After due notice, a telephone hearing was conducted on Thursday, December 22, 2011. The Claimant personally appeared and provided testimony.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance based on disability (MA-P) and 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 20, 2011, the Claimant submitted an application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits alleging disability.
2. On September 2, 2011, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA) because it determined that he is capable of performing other work.
3. On September 12, 2011, the Department sent the Claimant notice that it had denied the application for assistance.
4. On September 21, 2011, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On November 14, 2011, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P and SDA benefits.
6. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
7. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application; however, the Claimant reported that a SSI appeal is pending.
8. The Claimant is a 54-year-old man whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 216 pounds. The Claimant is a high school graduate and participated in special educational programming while in school.
9. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
10. The Claimant has past relevant work experience in a plastic's factory where he was required to run a machine press, stand for up to 2 hours at a time, and lift objects weighing up to 35 pounds.
11. The Claimant has past relevant work experience in a plastic molding factory and a cement factory.
12. The Claimant has past relevant work experience repairing mobile homes and operating a forklift.
13. The Claimant alleges disability due to diabetes, back pain, leg pain, knee pain, and headaches.
14. The objective medical evidence indicates that the Claimant's cholesterol level makes him a borderline risk for coronary heart disease. The Claimant has a cholesterol level of 176, triglycerides of 69, high-density lipoprotein (HDL) of 40, and low-density lipoprotein (LDL) of 122.
15. The objective medical evidence indicates that the Claimant has a creatinine level of 0.9 and an estimated glomerular filtration rate (GFR) of 106, which does not indicate impairment due to kidney disease.
16. The objective medical evidence indicates that the Claimant has been diagnosed with diabetes and has a glycated hemoglobin (A1C) level of 11.3.
17. Medical reports indicate that the Claimant has been diagnosed with resolving symptoms from cervical spondylosis and a cubital tunnel and carpal tunnel syndromes.

18. The objective medical evidence indicates that the Claimant has been diagnosed with cervical spondylosis at C4-5, and C5-6.
19. Medical reports indicate that the Claimant's treatment plan consists of anti-inflammatory medication, pain medicine, avoidance of aggravating activities, and a carpal tunnel brace.
20. The objective medical evidence indicates no evidence of bone edema, cortical disruption, or osteochondral fragmentation.
21. The objective medical evidence indicates that the Claimant has moderate ventral effacement of the thecal sac at C4-5.
22. The objective medical evidence indicates that the Claimant has moderate ventral effacement of the thecal sac and severe ventral effacement secondary to bulging of the annular margin at C5-6 but otherwise good maintenance of the thecal body heights and vertebral body alignment.
23. The objective medical evidence indicates that the Claimant has moderate to marked right-sided carpal tunnel syndrome, moderate to marked right ulnar entrapment at the elbow, and moderate right sided cervical radiculopathy in the C5-6 nerve root.
24. The objective medical evidence indicates that the Claimant has a normal gait without assistance.
25. The objective medical evidence indicates that the Claimant is capable of preparing meals, shopping for groceries, showering, and dressing himself.
26. The objective medical evidence indicates that the Claimant is capable of standing for up to two hours.
27. The objective medical evidence indicates that the Claimant has been diagnosed with arthritis in the lower lumbar region of his spine.
28. The objective medical evidence indicates that the Claimant has been diagnosed with hypertension that is under fair control.
29. The objective medical evidence indicates that the Claimant has a normal range of motion.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit

levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (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 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 of Human Services (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 Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit the Claimant's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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 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).

Medical evidence includes:

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).

...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 techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because non-examining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist. 20 CFR 416.927

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).

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).

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).

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 416.920(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? 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 performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

STEP 1

At Step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity is defined as work activity that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience. Whether the Claimant is performing substantial gainful activity will be determined by federal regulations listed in 20 CFR 416.971 through 416.975.

The Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

At Step 2, the Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months.

The Claimant is a 54-year-old man, that is 5' 9" tall and weighs 216 pounds. The Claimant alleges disability due to diabetes, back pain, leg pain, knee pain, and headaches.

The objective medical evidence indicates that the Claimant's cholesterol level makes him a borderline risk for coronary heart disease. The Claimant has a cholesterol level of 176, triglycerides of 69, high-density lipoprotein (HDL) of 40, and low density lipoprotein (LD) of 122.

The objective medical evidence indicates that the Claimant has been diagnosed with hypertension that is under fair control.

The objective medical evidence indicates that the Claimant has a creatinine level of 0.9 and an estimated Glomerular filtration rate of 106, which does not indicate impairment due to kidney disease.

The objective medical evidence indicates that the Claimant has been diagnosed with diabetes and has a glycated hemoglobin (A1C) level of 11.3.

Medical reports indicate that the Claimant has been diagnosed with resolving symptoms from cervical spondylosis and a cubital tunnel and carpal tunnel syndromes.

The objective medical evidence indicates that the Claimant has been diagnosed with cervical spondylosis at C4-5, and C5-6. The objective medical evidence indicates that the Claimant has a moderate ventral effacement of the thecal sac a C4-6. The objective medical evidence indicates that the Claimant has moderate ventral effacement of the thecal sac and severe ventral effacement secondary to bulging of the annular margin at C5-6 but otherwise good maintenance of the thecal body heights and vertebral body alignment.

The objective medical evidence indicates that the Claimant has been diagnosed with arthritis in the lower lumbar region of his spine.

Medical reports indicate that the Claimant's treatment plan consists of anti-inflammatory medication, pain medicine, avoidance of aggravating activities, and a carpal tunnel brace. The objective medical evidence indicates no evidence of bone edema, cortical disruption, or osteochondral fragmentation.

The objective medical evidence indicates that the Claimant has a normal gait without assistance. The objective medical evidence indicates that the Claimant has a normal range of motion. The Claimant is capable of preparing meals and shopping for groceries. The Claimant is capable of standing up to 2 hours.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment which meets the severity and duration standard for MA-P and SDA purposes.

STEP 3

At Step 3, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

Diabetes mellitus and other pancreatic gland disorders disrupt the production of several hormones, including insulin, that regulate metabolism and digestion. Insulin is essential

to the absorption of glucose from the bloodstream into body cells for conversion into cellular energy. The most common pancreatic gland disorder is diabetes mellitus (DM). There are two major types of DM: type 1 and type 2. Both type 1 and type 2 DM are chronic disorders that can have serious disabling complications that meet the duration requirement. Type 1 DM--previously known as "juvenile diabetes" or "insulin-dependent diabetes mellitus" (IDDM)--is an absolute deficiency of insulin production that commonly begins in childhood and continues throughout adulthood. Treatment of type 1 DM always requires lifelong daily insulin. With type 2 DM--previously known as "adult-onset diabetes mellitus" or "non-insulin-dependent diabetes mellitus" (NIDDM)--the body's cells resist the effects of insulin, impairing glucose absorption and metabolism. Treatment of type 2 DM generally requires lifestyle changes, such as increased exercise and dietary modification, and sometimes insulin in addition to other medications. While both type 1 and type 2 DM are usually controlled, some persons do not achieve good control for a variety of reasons including, but not limited to, hypoglycemia unawareness, other disorders that can affect blood glucose levels, inability to manage DM due to a mental disorder, or inadequate treatment.

The objective medical evidence indicates that the Claimant's cholesterol level makes him a borderline risk for coronary heart disease. The objective medical evidence indicates that the Claimant has a creatinine level of 0.9 and an estimated glomerular filtration rate (GFR) of 106, which does not indicate impairment due to kidney disease. The objective medical evidence indicates that the Claimant has been diagnosed with diabetes and has a glycated hemoglobin (A1C) level of 11.3. The objective medical evidence indicates that the Claimant has been diagnosed with hypertension that is under fair control.

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

(a) Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

(b) Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

The objective medical evidence does not establish that the Claimant is not able to ambulate effectively or has lost the ability to perform fine and gross movements in his upper extremities.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc 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 1.00B2b.

The objective medical evidence indicates that the Claimant is capable of unassisted ambulation and has a normal gait. The Claimant is capable of preparing meals, shopping for groceries, showering, and dressing himself. The objective medical evidence indicates that the Claimant is capable of standing for up to two hours.

The medical evidence of the Claimant's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

At Step 4, the Claimant's residual functional capacity (RFC) is examined to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

The Claimant has past relevant work experience in a plastics factory where he was required to run a machine press and lift objects weighing up to 35 pounds.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work in which he has engaged in, in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for 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.... 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).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do light or sedentary tasks if demanded of him. The Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments for a period of 12 months. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

The Claimant has past relevant work experience in a plastic molding factory and a cement factory. The Claimant has past relevant work experience repairing mobile homes and operating a forklift.

Claimant is 54-years-old, a person closely approaching advanced age, 50-54, with a high school education, and a history of unskilled work. The Claimant has transferrable skills developed during his past relevant work history. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work, and Medical Assistance (MA) and State Disability Assistance (SDA) is denied using Vocational Rule 20 CFR 201.14 as a guide.

The Department's Program 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 the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the 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 the 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 the Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The Claimant should be able to perform a wide range of sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED**.

/s/ _____
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 17, 2012

Date Mailed: January 17, 2012

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.

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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.

KS/tb

cc:

