

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

IN THE MATTER OF:



Reg. No.: 2012-19229
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 29, 2012
County: Wayne (82-41)

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 February 29, 2012, by teleconference from Detroit, Michigan.

ISSUE

Was the denial of claimant's application for Medical Assistance Program (MA-P), State Disability Assistance (SDA), and retroactive MA-P benefits 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 SDA on June 22, 2011.
2. Claimant is 32 years old.
3. Claimant has a 12th grade education.
4. Claimant is not currently working.
5. Claimant has a prior work history as a laborer and security guard.
6. These positions were performed at the heavy and light exertional levels.

7. Claimant's job responsibilities as a security guard included the use of his legs for extended periods of time, and to make sure no fights occurred in the area he was guarding.
8. Claimant testified that no arm use was required in this job.
9. Claimant testified that leg use was the only physical job requirement.
10. Claimant did not have to lift, push, or pull anything in this job.
11. Claimant testified that the only reason he could not do this job now was liability issues.
12. Claimant has a history of a motor vehicle accident in [REDACTED] with scapular and clavical fracture of the upper right extremity.
13. Claimant currently has complete right arm paralysis.
14. Claimant cannot use his right arm for any purpose.
15. Claimant has no other current medical problems.
16. Claimant has been restricted to lifting only 15 pounds with his left hand, due to his complete inability to use the right hand.
17. On December 1, 2011, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing other work.
18. On December 5, 2011, claimant was sent a notice of case action.
19. On December 19, 2011, claimant filed for hearing.
20. On January 27, 2012, the State Hearing Review Team (SHRT) denied MA-P and SDA, stating that claimant was capable of performing other work.
21. On February 29, 2012, a hearing was held before the Administrative Law Judge.

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 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).

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 BAM, BEM and 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 (SGA) 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 is necessary. 20 CFR 416.920.

The first step that must be considered is whether the claimant is still partaking in 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 2011 is \$1,640. For non-blind individuals, the monthly SGA amount for 2011 is \$1,000.

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 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. 20 CFR 416.920(c). 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 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. 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 medical evidence of a motor vehicle accident in [REDACTED] with scapular and clavical fracture of the upper right extremity, according to the great weight of the evidence by both the Department and claimant’s treating source. The symptoms described by claimant, and supported by independent medical evidence, support the existence of a condition that would result in an impairment that would limit claimant’s ability to perform basic work activities. Records indicate that claimant experiences complete right arm paralysis. This impairment would affect physical functions in the workplace, including lifting, pushing, pulling, and reaching. Claimant thus passes step two of our 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. 20 CFR 416.925. This is, generally speaking, an objective standard; either the claimant’s impairment is listed in this appendix, 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 claimant’s medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 1.00 (Musculoskeletal). Claimant’s condition is most analogous to upper extremity

amputation. The listings for that impairment require the amputation or inability to use both upper extremities. Therefore, 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 he 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 source 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 nor 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, it is undisputed that claimant has complete paralysis of the right arm. Medical reports, supplied by both claimant and the Department, indicate that claimant has difficulty with any task that requires the use of both arms. Claimant’s treating source limits claimant to lifting only less than 15 pounds with his left arm, due to the lack of support from his right. Claimant cannot reach, push, pull, or manipulate with the right arm, but has no restrictions on these tasks with the left arm.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering functions that require lifting, pushing, and pulling with both hands. Claimant has some limitation in lifting some objects; claimant’s treating source limited claimant to lifting less than 15 pounds with the left arm. Claimant has no limitations in the use of the left hand for manipulation, pushing or pulling. Claimant should avoid climbing and working at unprotected heights. Claimant has no postural limitations (e.g., stooping, bending, and crouching), and no visual limitations or

communicative (hearing, speaking) limitations. Claimant has no limitations with standing, walking, or the use of his legs.

Claimant's PRW includes work as a security guard. This job, as typically performed and described by claimant, required preventing fights and skating (the job was performed at a skating rink). Claimant did not have to lift in this job or use his arms for any task, per his own testimony. The job did require excessive standing and walking, but, per testimony, claimant has no limitations in this area. This job requires communicative skills.

When asked whether he could still do this job, claimant responded "no"; however, claimant stated the reason he could not do this job was for liability reasons and not for any physical limitation caused by his impairment. Claimant believed that he could not be hired for a similar job because of the condition of his arm, but not because he could not physically do the job.

The step four evaluation makes no differentiation as to whether a claimant could actually be hired to do his past relevant work, only as to whether a claimant possesses the physical residual functional capacity to perform his past relevant work. Claimant testified, under oath, that his past job only required the use of his legs and did not require the use of his arms in any manner. Therefore, claimant, by his own testimony, possesses the physical residual functional capacity to perform his prior relevant work.

Therefore, given the functional requirements for these types of jobs, as stated by claimant (which is consistent with how these jobs are typically performed) and claimant's functional limitations, as described above, the Administrative Law Judge concludes that claimant does retain the capacity to perform his past relevant work.

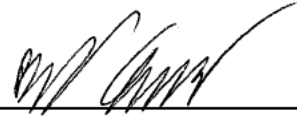
As claimant retains the capacity to perform past relevant work, the undersigned must find that claimant does not meet the requirements to be found medically disabled. As claimant does not meet the requirements to be found medically disabled, the undersigned holds that the Department was correct when claimant was not considered disabled for the purposes of the MA-P and SDA programs.

As claimant has been found not disabled at Step 4, no further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not disabled for the purposes of the MA-P and SDA programs. Therefore, the decision to deny claimant's application for MA-P and SDA was correct.

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



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

Date Signed: March 15, 2012

Date Mailed: March 15, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

RJC/pf

cc:

