

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 25225
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 15, 2012
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 hearing. After due notice a telephone hearing was held on March 15, 2012. The Claimant appeared and testified. [REDACTED], ES, Medical Contact Worker appeared and testified on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) and State Disability Assistance ("SDA") benefit programs?

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 April 26, 2011.
2. On December 28, 2011, the Medical Review Team (MRT) determined that the Claimant was not Disabled. (Exhibit 1)
3. On January 5, 2012, the Department notified the Claimant of the MRT determination. (Exhibit 1)
4. January 12, 2012, the Department received the Claimant's timely written request for hearing. (Exhibit 1)

5. On February 14, 2012, the State Hearing Review Team (SHRT) found the Claimant not disabled. (Exhibit 3)
6. New evidence was submitted to the State Hearing Review Team (SHRT) on June 7, 2012.
7. The State Hearing Review Team (SHRT) on July 12, 2012 found the Claimant not Disabled. (Exhibit 4)
8. Claimant alleged physical disabling impairments due to chronic lower back and neck pain, infection in his jaw, a mass in the lower right jaw, bleeding in stomach, a hernia, right should pain, bone chips in his elbows, cramps in his feet arches and shin splints, carpal tunnel syndrome in his fingers and hands, and high blood pressure.
9. The Claimant alleged mental disabling impairments due to depression due to homelessness and has not received any treatment for his depression.
10. On the date of the hearing Claimant was [REDACTED] years of age with a [REDACTED] birth date. At present the Claimant is [REDACTED] years of age. Claimant is 5'11" and weighs approximately 170 pounds.
11. The Claimant is a high school graduate.
12. The Claimant is not currently participating in substantial gainful activity and has not worked since 2008.
13. The Claimant has a prior work history consisting of self employment as a semi truck driver and also operated a hi-lo loading and unloading pallets, and also worked as a switcher of truck trailers.
14. The Claimant's impairments have last or are expected to last 12 months or more.

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 (RFT).

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 MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

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 including whether the Claimant is engaged in 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 partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. In the current case, as outlined above, the first step looks at the individual’s current work activity. In the record presented Claimant has testified that he is not working, and is not involved in substantial gainful activity and therefore is not ineligible for disability benefits under Step 1.

The second step that must be considered is whether or not the claimant has a severe impairment. The severity of the Claimant’s alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. 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 regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). The impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). The term “basic work activities” means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). 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 lower back and neck pain and a neck mass cyst lower right jaw area (right parotid gland). On February 25, 2012, Claimant was admitted to the hospital and treated for his neck pain and swollen neck mass, which was aspirated and abdominal hernia and tenderness to the abdominal area. The Claimant was also diagnosed with a severe gastritis and ulceration, which was treated. The impression from the CT scan was diverticulosis without evidence of diverticulitis. The Claimant also complained of low back pain not radiating into lower extremities. The Claimant was discharged and it was determined that the neck mass was non malignant but was the size of an orange.

In July 2011 the Claimant was seen for a consultative examination. During the exam a large ventral hernia was noted. The range of motion was diminished in the cervical spine, lumbar spine and bilateral shoulders. There was complaint of pain with range of motion testing of the back and neck. Straight leg raising was negative, and grip strength was intact. Mild difficulty getting out of chair and on and off the examination table and moderate difficulty heel toe walking and severe difficulty squatting. The exam conclusions noted history of tumor in the right jaw, history of abdominal pains with hernia; back and neck pain with diminished range of motion in his neck and back. The examiner noted that the Claimant did not require need of assistive device to ambulate, and noted x rays may be of benefit to this patient.

A Medical Examination report was completed [REDACTED], with some physical limitations. The Claimant was found capable of lifting frequently (2/3 of an 8 hour day) 10 - 20 lbs. The examiner's notation in this regard were unclear. The Claimant could operate foot leg controls with both feet, could use his hands and arms to grasp and reach for fine manipulating. The exam noted the Claimant complained of depression and spasms in his back. The diagnosis was right jaw tumor, depression, chronic cervical and lumbar pain and myofasciatis.

In November 2011, the Claimant was seen for another consultative exam. The exam noted soft tissue growth on right side of lower jaw, ventral hernia and chronic pain involving his cervical and lumbar spine. Range of motion for all joints checked was full. Straight leg raising test was negative. Grip and pincher strength was intact and hands had full dexterity. No difficulty getting on and off the exam table. The conclusions were right jaw mass requires biopsy; ventral hernia, requires repair. Lumbar and cervical spine pain, patient would benefit from physical therapy. X-rays of cervical spine and lumbosacral spine taken. Noted restrictions were ambulating and climbing stairs secondary to pain in lumbar spine. He has the ability of his upper extremities for lifting pulling pushing and carrying 10 pounds frequently and 20 pounds occasionally throughout the day. Grip strength has no restrictions and can use his fingers for fine manipulation tasks. The results of the lumbosacral spine x-ray were limited. Exam shows no definite abnormalities in the lumbosacral spine. Likewise with the x-ray of the cervical spine, it noted exam somewhat limited, the cervical spine as visualized shows no significant abnormalities. Exhibit 1 pages 11 -17.

The Administrative Law Judge finds that the Claimant's medical evidence as summarized above presents sufficient objective medical evidence to substantiate the alleged disabling impairment(s), establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment or combination thereof that has more than a de minimus effect on the Claimant's basic work activities. Further, the impairment has lasted continuously for twelve months; therefore, the Claimant is not disqualified, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, the trier of fact must determine if the Claimant's impairments, or combination of impairments 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 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 the Claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Listing 1.00 Musculoskeletal System, Listing 1.02 (Major dysfunction of a joint) and Listing 1.04 (disorders of the spine), as well as Listing 9.00 (Malignant Neoplastic Diseases) and Listing 12.04 (Affective Disorders – Depression) were considered in light of the objective evidence.

Ultimately, based on the medical evidence, it is found that the Claimant's impairments do not meet the intent and severity and specific requirements of a listed impairment. 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 step, step 4 in the sequential evaluation.

The fourth step in analyzing a disability claim requires an assessment of the claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of self employment as a semi truck driver and operation of a hi-lo loading and unloading pallets. The Claimant also was a switcher, moving semi trailers throughout a truck facility. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled light to medium work.

The Claimant testified that he is able to walk about a couple of blocks, lift/carry up to a few pounds; and that he can stand for short periods 15 to 20 minutes ; sit for about an hour; and is unable to bend and/or squat. The Claimant also testified that he did not pass the physical test required to drive a truck. The objective medical evidence places the Claimant at mild activity. The medical evidence does contain physical restrictions placed upon the Claimant by his doctors or the independent medical examination doctor that limits his ability to ambulate and climb stairs due to lumbosacral pain and can only carry 10 pounds frequently. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920.

In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is 51 years old and, thus, is considered to be of a person closely approaching advanced age for MA-P

purposes. The Claimant has a high school diploma. At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to perform substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, the evidence reveals that the Claimant suffers from cervical and lumbar pain, ventral hernia, and neck mass. The Claimant testified that he can dress himself and tie his shoes but cannot bend from the waist or squat. The bending limitation and squatting is supported by the medical records. The Claimant's testimony described that he experienced significant pain with regard to his back and neck (pain level 7 with over the counter medication). The Claimant further described limitation of motion with ambulation and stair climbing supported by the objective medical evidence. Claimant claims some limitations in walking and standing, but can sit for an hour. In consideration of the foregoing and in light of the objective limitations, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing to meet at the physical and mental demands required to perform sedentary work in 20 CFR 416.967(b).

After review of the entire record, the testimony of the Claimant and the medical evidence and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.14, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, the Claimant is found disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the April 26, 2011 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive in accordance with the April 26, 2011 application and any retroactive period, if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in July 2013 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 30, 2012

Date Mailed: July 30, 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:

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- 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 to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/ hw

cc:

