

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-26939
Issue No: 2009; 4031

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 telephone hearing was held on [REDACTED]. The claimant appeared and provided testimony. [REDACTED] appeared and provided testimony on behalf of the department.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) and State Disability Assistance (SDA) application?

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 [REDACTED], claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did apply for retro MA.
3. On [REDACTED], the MRT denied.
4. On [REDACTED], the DHS issued notice.
5. On [REDACTED], claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he has an SSI application pending with the Social Security Administration (SSA).
7. On [REDACTED], the State Hearing Review Team (SHRT) denied claimant.

8. As of the date of hearing, claimant was a [REDACTED] standing 5'10" tall and weighing 145 - 150 pounds. Claimant has a high school education and some college.
9. Claimant testified that he smokes approximately one pack of cigarettes every two days. He does not drink alcohol or abuse any illegal drugs.
10. Claimant does not have a driver's license [REDACTED].
11. Claimant is not currently employed. Claimant last worked in [REDACTED] painting parts for military vehicles. Claimant also has work history doing maintenance work, unloading trucks, working security and as a flag person for highway construction.
12. Claimant alleges disability on the basis of shoulder and back problems.
13. An [REDACTED] progress note indicates the client reported he was having pain in his shoulders. Examination revealed tenderness over the AC joint as well as in the posterior shoulder on the right side. An MRI showed mild degenerative changes at the glenohumeral joint, but no rotator cuff tear.
14. A [REDACTED] progress note indicates that the claimant reported he had completed physical therapy. Examination showed minimal tenderness in the posterior shoulders. He had great range of motion and no pain with abduction and internal or external rotation. Claimant was found to have resolved tendinitis of the shoulder. He was encouraged to keep active and follow up on an as needed basis.
15. Claimant reported to the emergency room on [REDACTED] for back pain that he indicated occurred while he was rolling a heavy drum at work. Examination revealed soft tissue tenderness in the right lower lumbar area, moderate muscle spasm present in the right lower lumbar area, limited range of motion in the back and no vertebral joint tenderness or CVA tenderness. A LS spine series of x-rays were negative. The client was ambulating without assistance and was discharged in good condition. Claimant was diagnosed with a lumbar strain and an acute myofascial strain.
16. A [REDACTED] MRI of the lumbar spine found mild narrowing of the right foramen at the L4-L5 level and small central disk protrusion at the L5-S1 level. These findings are of doubtful clinical significance. No other evidence for disk herniation impinging upon neural structures is seen. There is no canal stenosis or other acute process demonstrated.

17. An [REDACTED] lumbar spine study found no evidence of fracture or other acute osseous abnormalities seen. The intervertebral disk space heights were preserved and the pedicles were intact. The impression was a muscle strain of the lumbar spine.
18. A [REDACTED] progress note indicated the claimant presented with a chief complaint of having severe pain in the left lower back, extending into the hip and down the leg. An x-ray of the hip and the lower back showed no bony abnormalities. The claimant had decreased range of motion of his LS spine, particularly extension. He had questionable weakness, proximal in the thigh. No obvious weakness noticed distal. However, the exam was quite limited as the client had exaggerated reactions.
19. A [REDACTED] MRI of the lumbar spine found a previously noted small central herniated disk protrusion at the L5-S1 level is again noted and was unchanged from the prior study. At the L4-L5 level, there is some very mild asymmetric disk bulging to the right causing some narrowing of the right foramen. The L1-L2, L2-L3 and L3-L4 levels are again unremarkable. The findings on this study are similar to the prior study.
20. A [REDACTED] progress note indicates the client presented for follow up of his back pain. The client was to return to work on June 2, but he was suspended for poor attendance. The client reported that he still had some back pain which continued to be, at times, quite severe in the left hip. Examination showed he did not appear to have any spinal tenderness and minimal paraspinal tenderness. Straight leg raise was negative and there were normal deep tendon reflexes of his ankles and knees. He did not appear to have any problems ambulating. The MRI showed some abnormalities that did not appear to correlate with his symptoms, so the physician referred him to an orthopedic surgeon. However, it was noted in the file that the client cancelled his appointment with the orthopedic surgeon and did not reschedule.

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).

Statutory authority for the SDA program states in part:

- (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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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.

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:

...You must 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 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.

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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8. After review of the medical evidence, it is the opinion of this ALJ that the claimant remains capable of performing a wide range of light work.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant can return to some of his past relevant work on the basis of the medical evidence. One of the claimant's prior positions was as a security guard. A security guard is light in exertional level according to the Dictionary of Occupational Titles. Therefore, the claimant would be capable of performing his past relevant work as a security guard.

Claimant has submitted insufficient objective medical evidence that he lacked the residual functional capacity to perform at least light work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform his previous work that was light in nature. Claimant is disqualified from receiving disability at Step 4 based upon the fact that he has not established by objective medical evidence that he could not perform at least light work. Claimant does not dispute that he is able to work; in fact, he testified that he has been trying to get a job and he also indicated on his medical-social questionnaire (DHS-49-F) that he has an injury [REDACTED]. Therefore, while the claimant does have some impairments, it is apparent that he is capable of working.

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is **UPHELD**.

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

Date Signed: _____

Date Mailed _____

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 mailing date of the rehearing decision.

SLM/jk

cc: _____
MAHS