

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

IN THE MATTER OF:



Reg. No.: 2012-29108
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: March 22, 2012
County: Ottawa

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on March 22, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On May 30, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA 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 September 26, 2011, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.

- (2) On January 12, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant's non-severe impairment lacked duration. The MRT also denied Claimant's SDA application for lack of duration.
- (3) On January 19, 2012, the department sent out notice to Claimant that his application for Medicaid and SDA had been denied.
- (4) On January 26, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On March 1, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating Claimant's condition is improving or is expected to improve within 12 months from the date of onset. SDA was denied for lack of duration. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of a car/bike accident and a broken clavicle.
- (7) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 160 lbs. Claimant completed a high school equivalency education and some college. Claimant last worked in construction laying concrete for 16 years in January, 2008.
- (8) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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 Reference Tables 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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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

Disability is 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(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed

impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and testified that he has not worked since January, 2008. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to a car/bike accident and a broken clavicle.

On September 14, 2011, Claimant was brought to the emergency department by ambulance after apparently being struck by a car while on his bicycle. He reported riding his bike and perhaps falling off of it. Alcohol level was 0.62. Chest x-ray revealed a left 2nd rib fracture, and old- right sided rib fractures. A CT of the head was negative. A CT of the facial bones showed left maxillary sinus disease, but no acute fracture. Cervical spine films showed fractures of the left transverse process of T7 and T1. A CT scan of the chest, abdomen and pelvis showed fractures to the right and left 1st and 2nd ribs with a tiny apical pneumothorax on the left. The left humerus showed an acute fracture of the distal tip of the clavicle. Claimant was admitted. He was discharged on September 17, 2011, with instructions to continue wearing the sling and cervical collar.

On October 1, 2011, Claimant went to the emergency department requesting a refill of his hydromorphone tablets. Claimant received 2 mg IM Dilaudid and 25 mg IM Phenergan and a prescription for hydromorphone and Valium for home.

On October 4, 2011, Claimant was seen by orthopedics for follow-up of his car/bike incident. Claimant does not know if he was hit by a car or he ran into a car. Claimant denied any significant neck pain but did describe some discomfort with the cervical collar. He denied any radiating arm pain, numbness, or tingling. The collar was removed and cervical range of motion testing revealed full movement in all planes. No gross abnormalities were identified on the limited motor strength assessment performed, given his left clavicular fracture. The flexion and extension x-rays from 9/22/11 were viewed and revealed a normal anatomic alignment from C1 to C7. No subluxation was identified in flexion or extension. Osteophytes and degenerative disc

disease were noted from C5 to C7. Claimant was doing well following the nondisplaced left-sided C7-T1 transverse fracture and no further follow-up was anticipated.

On October 7, 2011, Claimant went to the emergency department requesting pain medications for his bicycle accident. Claimant received a prescription for 15 tablets of Opana 10 mg and was given another physician's telephone number to follow-up with.

On October 12, 2011, Claimant went to the emergency department requesting a refill of his Opana medication. Claimant received a prescription for 30 Ultram tablets.

On October 18, 2011, Claimant went to the emergency department complaining of pain in his left shoulder and wanted prescription refills for his pain medication, stating he could not find a primary physician who would fill his pain prescription. Claimant was still wearing the collar and using the sling. The examining physician took Claimant out of the sling, and he was tender over the distal clavicle. His sensation was intact over the axillary nerve. He had painful and limited range of motion at the left shoulder. He had good range of motion at the elbow and the wrist. His gait was normal. He did not remember quite a few things about the bike accident. Claimant was prescribed Oxymorphone and Tramadol and released.

On October 24, 2011, Claimant went to the emergency department for refills of his prescriptions. Claimant had no significant tenderness throughout his cervical spine. He did not have any ecchymosis noted over his clavicle area or his shoulder area. He had 5/5 strength in his arms. Extracranial nerve appeared to be intact. He had 5/5 strength to his legs. Claimant was prescribed Percocet with a final diagnosis of posttraumatic shoulder and clavicle pain, recent history of a bicycle accident, and a history of previous alcohol abuse.

On October 27, 2011, Claimant was brought to the emergency department by ambulance after the paramedics reported that he was found minimally responsive with a pulse oximetry in the mid 80's on room air. Claimant was initially lethargic and could answer questions, but did so very slowly and unreliably. He stated that he had had a recent cough, fever, or shortness of breath. He admitted to smoking 3 packs of cigarettes a day. A chest x-ray showed no evidence of acute cardiopulmonary disease. Blood alcohol level was zero. He had a normal ECG. A urine drug screen was ordered but no sample was obtained prior to Claimant leaving. On arriving, Claimant had a high fever, tachycardia, hypoxia, and an altered mental status. After receiving about 1 ½ liters of IV normal saline, Claimant was sitting up, alert, and normally interactive. He progressively got more agitated and demanded to leave. His complete blood count showed leukocytosis with a significant bandemia, but no evidence of pneumonia. The examining physician suggested more prolonged observation was prudent based on Claimant's initial presentation, however, Claimant flatly refused and left against medical advice. The unscheduled emergency discharge summary was for hyperthermia and altered mental status resolved.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that he had a car/bike accident and a broken clavicle. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P, Retro-MA and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

/s/

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

Date Signed: 6/20/12

Date Mailed: 6/20/12

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

VLA/ds

