

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-40129
Issue No: 2009
Case No: [REDACTED]
Hearing Date: May 1, 2012
DHS MA Special Processing Unit

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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 May 1, 2012. The claimant appeared and provided testimony. [REDACTED] provided testimony on behalf of the department.

ISSUE

Did the Department of Human Services (DHS) properly determine the claimant did not meet the disability standard to receive Medical Assistance (MA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant was receiving Interim MA.
2. On January 11, 2012, the Medical Review Team (MRT) determined the claimant did not meet the disability standard to continue to receive MA.
3. The claimant was sent notice of this decision on February 17, 2011.
4. On March 7, 2012, the claimant submitted a hearing request.
5. On March 27, 2012, the State Hearing Review Team (SHRT) denied claimant pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on May 21, 2012, SHRT once again denied claimant.
6. Claimant testified at the administrative hearing that he has an SSI application pending with the Social Security Administration (SSA).

7. As of the date of hearing, claimant was a 39-year-old male standing 6'4" tall and weighing 205 pounds. Claimant has a GED and has received some training through GM in automotive repair.
8. Claimant testified that he does not have a driver's license as it is suspended.
9. Claimant is not currently working. Claimant last worked in June of 2007, doing auto body work.
10. Claimant alleges disability on the basis of a previous brachial plexus injury, herniated disc, leg pain, migraines, anxiety and depression.
11. The claimant reported to the emergency room on February 17, 2011 complaining of leg pain. Examination and testing found nothing and the claimant was discharged home.
12. The claimant had an initial appointment with a primary care physician on March 3, 2011. Physical examination found the claimant to be alert and oriented times 3 with no signs of agitation, anxiety or depression. The left arm did show severe muscle atrophy, distally with a somewhat cyanotic left hand.
13. On December 7, 2011 the claimant underwent a psychiatric/psychological medical examination. The claimant's mood was bright, his mannerisms were cooperative and animated. He appeared to be in contact with reality. He reported that he felt good about himself. There was no unusual motor activity, but he was animated. His thoughts were spontaneous and well organized. There were no problems in pattern or content of speech. He denied the presence of any auditory or visual hallucinations. He denied obsession or unusual powers. He had feelings of worthlessness and he reported he had not been suicidal in over a year. Throughout the evaluation his emotional reaction appeared bright and animated. The clinician opined that the client's ability to relate and interact with others; including co-workers and supervisors were impaired. His depression and mood fluctuations could affect his interpersonal relationships in the work place. His ability to understand and complete tasks and expectations does appear to be significantly impaired. His ability to maintain concentration was impaired. As of a result of his emotional state, he may often be distracted and his effectiveness and performance will likely be limited and slowed. His ability to withstand the normal stressors associated with a work place setting is somewhat impaired. The claimant was diagnosed with bipolar disorder, most recent episode depressed, severe without psychotic features and assigned a GAF of 30.

14. On December 7, 2011 the claimant also underwent an independent medical examination. The claimant reported that he underwent an accident in 1994 when he hit a tree riding a dirt bike. He was diagnosed to have a brachial plexus injury at that time. The examination found cranial nerves II through VII normal. Motor systems show wasting of the forearm muscles and partial wasting of the left upper arm muscles. Deep tendon reflexes are absent in the left elbow and wrist. Knee reflexes are normal. Plantar are both down going and no sensory deficit was noted. Musculoskeletal examination found the patient to be ambulatory. He was able to touch his toes and able to squat completely. Arterial pulses were normal. There were no varicose veins and no edema of the feet. No cyanosis or clubbing present. Lumbar area was slightly tender and no muscle spasm was present. Straight leg raising test was negative bilaterally. His neck exam showed some tenderness in the muscle, but normal range of motion present. His hand grip was 100 pounds on the right and 0 on the left. The left forearm muscles are wasting. His left hand muscles are wasting. Some atrophic changes are seen in the fingers due to brachial plexus injury. He is able to open a jar, button clothing, write legibly, pick up a coin and tie shoe laces with the right hand, not the left. His right upper arm measures 13 inches and right forearm measures 11 inches. His left upper arm measures 12 inches and left forearm measures 9. inches. The claimant's dominant hand is his right hand. While the claimant gives the history of cervical and lumbar disc disease, there was no clinical evidence of decreased range of motion or radiculopathy on clinical examination.
15. Claimant has been referred by his treating physician to see a neurologist. An MRI of the claimant's brain showed a few white matter lesions; however, on comparison to previous imaging, there was not any progression of the disease in over 2 years. Therefore, the neurologist opined that the lesions appeared to be of no significance and were probably related to migraine history instead of a demyelinating disease. The claimant's neurologist placed him on methadone for the pain. The claimant reported that he tolerated it well, without nausea, vomiting, changing mood or behavior or any other specific side effects.
16. A March 6, 2012 physical examination found full range of motion of both the cervical spine and the lumbar spine with no pain upon extension, flexion, right or left lateral rotation. There was no sacroiliac joint tenderness. Straight leg raising was negative both sitting and lying. There was muscle wasting on the left arm and hand and pedal pulses are 2+. Strengths on the lower extremities in all areas, innervated by L2 through S1 are 5/5. In the upper extremities, all areas innervated by C4 through T1 strength is 5/5 on the right, absent of the left due to old injury. The claimant was able to heel and toe walk, deep tendon reflexes in the knees, ankles, biceps and triceps were 2/4 on the right. Cranial nerves 2

thrown 12 were grossly intact. Romberg was negative. Babinski was negative.

17. A mental status examination on March 12, 2012 found the claimant to be somewhat anxious about upcoming surgery. Otherwise, he indicated he was doing well. Claimant denied any suicidal ideation. His thought process was logical and relevant.

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).

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. The claimant does have a severe left brachial plexus injury that has caused significant wasting of the forearm and fingers with atrophic changes in the fingers on the left hand. However, his dominant hand is the right hand. The claimant also has reported a history of migraines, anxiety and depression. The claimant has reported some gains in his pain control with the methadone he is currently prescribed. The claimant also seems to have gained some control of his anxiety and depression with his current medication regime as his most recent mental examination status was unremarkable. It is noted that the claimant's injury and resulting health problems occurred in 1994. The claimant has worked and held down employment since this injury. Considering all of the evidence on the record, the claimant is found to retain the capacity to perform one handed light work. The claimant retains the capacity to use his right hand, which is his dominant hand. The muscle strength of all his extremities except his left hand is normal.

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 cannot return to past relevant work on the basis of the medical evidence. The Dictionary of Occupational Titles does list auto-body work as medium in exertional level. Therefore, the analysis will continue to step 5.

At the last step of the sequential evaluation process, the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. 20 CFR 404.1520(g) and 416.920(g).

Claimant has submitted insufficient objective medical evidence that he lacked the residual functional capacity to perform at least light work with one hand 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 other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he could not perform at least light work with one hand. Under the Medical-Vocational guidelines, a younger individual with a high school education or the equivalent and a history of semi-skilled work, who can perform at least light work is not considered disabled pursuant to Medical-Vocational Rule 202.21.

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/
Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 08/31/2012

Date Mailed: 09/04/2012

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 90 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 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

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