

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

IN THE MATTER OF:



Reg. No.: 2012-46575
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: July 10, 2012
County: Ionia

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 July 10, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [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 September 14, 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 January 20, 2012, Claimant filed an application for MA-P/Retro-MA and SDA benefits alleging disability.
- (2) On March 22, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that the non severe impairment lacks duration of 12 months pursuant to 20 CFR 416.909.

SDA was denied per BEM 261, physical or mental impairment does not prevent employment for 90 days or more.

- (3) On March 29, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On April 16, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 4, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of epilepsy and a left shoulder fracture.
- (7) Claimant is a 27 year old man whose birthday is [REDACTED] Claimant is 5'8" tall and weighs 155 lbs. Claimant completed high school plus one year of college.
- (8) Claimant had applied for 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).

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, Claimant is not involved in substantial gainful activity and testified that he has not worked since 2005. 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 epilepsy and a left shoulder fracture.

On August 29, 2011, Claimant was evaluated by his neurologist for follow-up of his epilepsy. Claimant was initially seen between 2006 and 2008 because of a presumptive diagnosis of focal epilepsy of left hemispheric origin. He was last seen in 2008. He returned with numerous seizure recurrences. He was initially treated with Carbatrol, but because he continued to have seizures on that

medication, Topamax was added to his regimen in 2008. He stated that in early 2009, following his last visit, he discontinued both medications on his own. He stated that he did that without the direction of a physician because of difficulties concentrating while on the medications. This resulted in numerous seizures in 2009, a few in 2010 (during 2010 he had a 9-month period without seizures), and he has had several seizures so far in 2011. At present, he was not on any medication. The neurologist spent 20 minutes counseling Claimant regarding his epilepsy and uncontrolled seizures and warning him that lack of compliance with his medications has been linked to more injuries related to seizures and an increased risk of dying.

On December 13, 2011, Claimant was evaluated by his neurologist for follow-up of his epilepsy. Claimant was last seen on 8/29/11 because of a presumptive diagnosis of focal epilepsy of the left hemisphere. At that time, he was started on antiepileptic therapy with a trial of Trileptal. According to Claimant, this was going to be too expensive, so he never started it. He then had a generalized motor seizure on 10/29/11, which resulted in an injury to his left shoulder. Since then, he has had 2 shoulder surgeries. At that time, Keppra was started by the emergency room. He took the Keppra up until 12/11/11, when he ran out and he suffered a breakthrough seizure at that time and was restarted on Keppra last night. While he was taking Keppra, he had no seizures and he tolerated it without any significant side effects. He is now taking pain medications including Percocet and Aleve. He stopped the Vicodin due to complaints of dizziness. At his last visit, an EEG and an MRI were ordered. However, he was a no-show for the appointments. In summary, Claimant presumptively suffers from a diagnosis of focal epilepsy and has been quite noncompliant with medications over the last several years.

On January 27, 2012, Claimant saw his orthopedist for follow-up 2 ½ months after his last treatment for recurrent left shoulder dislocation. He reported that his shoulder was doing much better. He had been going to physical therapy 3 times a week, and had increased soreness which was resolving. Overall, he reported feeling that he was improving and there had been no recurrent dislocations. X-rays showed his 3-part proximal fracture was completely healed without deformity. On examination, he had a fully stable shoulder and it was normally located. Physical therapy was continued and he was instructed to increase use as tolerated.

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 epilepsy and a left shoulder fracture. While the medical evidence showed Claimant does have epilepsy, it also shows that if Claimant remains compliant with his epilepsy medications, he does not have seizures, and that it is only when he stops taking his medications against medical advice, that he has seizures. His neurologist had also scheduled him a follow-up MRI and EMG which he failed to attend. In addition, Claimant told his

orthopedic surgeon back in January, 2012, that his shoulder was doing much better and the x-rays showed a completely healed shoulder.

Therefore, 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.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 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: September 27, 2012

Date Mailed: September 27, 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.

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