

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-52922
Issue No.: 2009;4031
Case No.: [REDACTED]
Hearing Date: August 8, 2012
County: Montmorency

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 August 8, 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 27, 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 March 8, 2012, Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
- (2) On May 5, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that he was capable of

performing other work, pursuant to 20 CFR 416.920(f). SDA was denied due to lack of duration.

- (3) On May 9, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On May 15, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 28, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retains the capacity to perform light work avoiding overhead reaching. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of a motor vehicle accident resulting in titanium plates at C5, C6 and C7, above and below the fusion, a torn rotator cuff, neck pain and bulging and herniated discs.
- (7) Claimant is a 32 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 150 lbs. Claimant completed the 10th grade.
- (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 October 13, 2007. 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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 motor vehicle accident resulting in titanium plates at C5, C6 and C7, above and below the fusion, a torn rotator cuff, neck pain and bulging and herniated discs.

On May 7, 2003, the SHRT denied Claimant's application for MA/Retro-MA and SDA. Claimant stated that his problems began 2 years ago after he had been buried in a ditch. He had an abnormal EMG in 10/02 consistent with lumbar radiculopathy involving posterior rami only. SHRT found the medical evidence of record indicated that Claimant retains the capacity to perform a wide range of sedentary work.

On October 3, 2011, Claimant's MRI cervical spine with and without contrast revealed a broad-based disc protrusion with slight degree of inferior extrusion suggested at the C4-C5 interspace level, suspicious for subligamentous disc hernia. There was also narrowing of the right neural foramen at C4- C5 and artifact related to plate fixation at the lower cervical levels. The MRI also showed nonspecific increased soft tissue density in the prevertebral space, adjacent to the anterior fixation plate. The MRI right shoulder revealed postoperative changes and a small partial tear of the supraspinatus tendon suspected.

On October 7, 2011, Claimant's primary care physician reviewed the MRI's from 10/3/11, showing degenerative disc protruding and bulging right above the surgery. Below the surgery site has prominent facet joint changes. MRI of the shoulder shows some bursitis changes and fluid within the biceps tendon sheath. Impression: Rotator impingement and possible tear and facet arthrosis. His physician recommended facet blocks and follow-up for the shoulder injection.

On November 2, 2011, Claimant had a bilateral fluoroscopic guided 2 level cervical medial branch blocks performed of the C7 and T1 medial branch nerves, innervation of bilateral C7-T1 facet joints. Following completion of the procedure, Claimant was evaluated and he experienced less than 50% improvement in his symptoms. He is not a candidate for RF ablation at these levels and was referred for further assessment.

On December 10, 2011, an independent medical examination was performed on Claimant on behalf of Claimant's auto insurance company. Claimant was diagnosed status post motor vehicle accident of October 13, 2007, with evidence consistent with a fairly large cervical disc herniation and bilateral shoulder injuries with some impingement noted on the right and a labral tear on the left. The examining physician opined that by history, the disc herniation in the cervical spine as well as in part the shoulder injuries appear to be accident related. At this juncture, he is at maximum medical improvement as it relates to the accident and permanent restrictions would be in order. Avoiding overhead activity, avoiding lifting weights greater than 10 pounds with either upper extremity as well as avoiding abduction of both arms to 60 degrees or less on a repetitive basis would be advisable. Most likely, these restrictions will be long term. At this point, there is no need for attendant care. He may need help with heavy household chore services only such as snow removal or lawn maintenance. Continued follow-up with his primary care physician as it relates to his pain medication would be reasonable. The examining physician added that Claimant is at maximum medical improvement with the use of injections, physical therapy, chiropractic intervention or any other passive modality at this point.

On April 2, 2012, Claimant participated in a medical examination by his primary care physician on behalf of the department. Claimant is diagnosed with cervicalgia, cervical spondylosis without myelopathy, chronic pain, lumbago, neuralgia and a rotator cuff sprain. Claimant had limited range of motion in his neck, shoulder and low back. The examining physician opined that Claimant's condition was deteriorating.

On June 5, 2012, Claimant saw his physician for follow-up. He has chronic neck and shoulder pain, and often stiffness in his mid and upper low back. He feels that this is aggravated by his difficulty finding a comfortable posture at sleep. He has been taking 30 mg of his Restoril at night to sleep. He has a history of cervical discectomy and fusion, bilateral shoulder arthroscopy, right carpal tunnel

surgery release and left knee arthroscopy. He stated his current medications seem to be helping him. He also took some of his mother's vicoden and had good pain relief. A musculoskeletal exam revealed pain localized to one or more joints in neck and shoulders and also low back. He did have some chiropractic treatments related to his accident in the past and thought this was helpful in improving his range of motion and flexibility. His physician found that Claimant does have some osteopathic somatic dysfunction and poor sleep patterns and limited flexibility. His physician recommended x-rays and would consider manipulation as an adjunct to his pharmacologic treatment. No cervical manipulation, but he could do some stretching and massage and osteopathic manipulative treatment to mid and low back. Claimant agreed with the plan.

On June 28, 2012, Claimant saw his primary care physician complaining of constant pain in spite of medication. He is frustrated by this but tries to stay active with activities of daily living. He uses home cervical traction sometimes. He has back spasm and occasional left gluteal paresthesia. He had neck pain and stiffness. His muscle aches and pain were localized to one or more joints. Joint stiffness localized to one or more joints in the neck, mid and lower back. His gait and stance were normal. X-rays were reviewed and he has minimal scoliosis which is mostly compensatory.

On July 10, 2012, Claimant saw a physician to discuss a possible reaction to his medication. He stated that he got blisters, fell asleep and when he woke up he was vomiting and having sweats. He was on Opana through [REDACTED] [REDACTED] [REDACTED] [REDACTED]. He was on this for several months and stated he had good pain relief and was down to only two Norco daily. He was then seen by his primary care physician and this was stopped. Norco alone has not been very effective. He also just started the Duragesic patch but that would only cause local and systemic side effects. He was in acute distress. The physician refilled a low dose of Opana.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged

physical disabling impairments due to a motor vehicle accident resulting in titanium plates at C5, C6 and C7, above and below the fusion, a torn rotator cuff, neck pain and bulging and herniated discs.

Listing 1.00 (musculoskeletal system), was considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual'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) 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 (exertional requirements, e. g., sitting, standing, walking, lifting, carrying, pushing, or pulling) 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 functioning 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.*

Claimant's prior work history consists of work in construction. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, heavy work.

Claimant testified that he is able to walk short distances and he had been restricting to lift/carry no more than 10 pounds. If the impairment or combination of impairments does not limit an individual's 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, Claimant cannot be found able to return to past relevant work. Accordingly, Step 5 of 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) At the time of hearing, the Claimant was 32 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant completed the tenth grade.

Disability is found if an individual is unable to adjust to other work. *Id.* 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 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963 (c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule (s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from a motor vehicle accident resulting in titanium plates at C5, C6 and C7, above and below the fusion, a torn rotator cuff, neck pain and bulging and herniated discs. The objective medical evidence notes limitations in reaching, lifting and carrying. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.24, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

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.

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: October 15, 2012

Date Mailed: October 16, 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.

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.

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