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

IN THE MATTER OF:



Reg. No.: 2012-62357 Issue No.: 2009, 4031 Case No.: Hearing Date: October 11, 2012 County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 hearing was conducted in Inkster, Michigan on October 11, 2012. Claimant appeared and testified. Claimant's mother, Authorized Hearing Representative and the statement of the Department of Human Services (Department).

ISSUE

Whether the Department pr operly determined that Claim ant was not disabled f or purposes of the Medical Ass istance (MA-P ") and State Disability Ass istance (SDA) benefit programs.

FINDINGS OF FACT

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

- 1. Claimant submitted an applic ation for public assistance seeking MA-P, Retroactive MA, and SDA benefits on December 6, 2011.
- 2. On March 31, 2012, the Medical Review Team (MRT) determined that Claimant was not disabled.
- 3. The Department notified Claimant of the MRT determination on April 6, 2012.

- 4. On June 23, 2012, the Department receiv ed Claimant 's timely written request for hearing.
- 5. On August 8, 2012, the State Hearing Review Team found Claimant not disabled.
- 6. At the time of the hearing, Claimant was 32 years old with a birth date of
- 7. Claimant has a high school education, having earned a GED.
- 8. Claimant is not currently working.
- 9. Claimant has a work history as a carpenter and RV resort manager.
- 10. Claimant suffers from congenital anomaly of peripheral vasc ular system lower extremities (chronic) (Exhibit 1, p.10)
- 11. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
- 12. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independenc e Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge s Administrative Manual ("BAM"), the Bridges Elig ibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Federal regulations r equire that the Depar tment use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an indiv idual is disabled, 20 CFR 4 16.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statut ory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) ar e assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if t he individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that he is not currently working and the D epartment presented no contradictory evidence. Therefore, Claimant is not disqualified for MA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CF R 416.920(c). A severe impairment is an impairment expected to last twelve months or more (or result in death) which signific antly limits an individual's physical or mental ability to per form basic work activit ies. The t erm "basic work activities" means the abilities and aptit udes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

The purpose of the second st ep in the sequential ev aluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a

result, the Department may only screen out cl aims at this level whic h are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a " *de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. Claimant suffers from congenital anomaly of peripheral vascular system lower extremities (chronic) (Exhibit 1, p.10)

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416. 925, and 416.926.) This Administrative La w Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "list ed impairment" or is medically equal to a listed impair ment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

In the present case, Claimant alleged disability due to Claimant suffers from congenital anomaly of peripheral vascular system lower extremities.

This Administrative Law Judge consulted all li support a finding that Claimant can be f ound evidence alone. 20 CFR 416.920(d).

all listings. The medical records do not ound to be disabled based upon medical

In the fourth step of the sequent ial consideration of a disability claim, the trier of fact must determine if the Claimant has the residual functional capacity (RFC) to perform the requirements of Claimant's past relevant work. 20 CFR 416.920(a) (4) (iv).

An individual's residual functional capacity is the individual's ability to d o physical and mental work activities on a sustained basis despite limitations from the indiv idual's impairments. Residual functional capacity is assessed based on impairment(s), and any related symptoms, such as pain, which m ay cause physical and mental lim itations that affect what can be done in a work setting. Re sidual functional capacity is the most that can be done, despite the limit ations. In making this finding, the trier of fact must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 416.920 (e) and 416.945; SSR 96-8p.) Further, a residual functionally capacity assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of tr eatment), reports of daily activities, lay evidenc e, recorded observations, medic al treating s ource s tatements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

The term past relevant work means work performed (either as Claimant actually performed it or as it is generally performed in the national econom y) within the last fifteen years or fifteen years prior r 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 substantially gainfully employed (20 CF R 416.960 (b) and 416.965.) I f Claimant has the residual functional capacit y to do Claimant's past relevant work, Claimant is not disabled. 20 CFR 416.960(b)(3). If Cl aimant is unable to do any past t relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

The medic al information indicat es that Clai mant suffers from congenital anomaly of peripheral vascular system lower extremities (c hronic) (Exhibit 1, p.10) In addition, Claimant's treating source indicated that due to Clai mant's significant vascular issues, "any job that requires him to stand or sit for extended periods of time i s going to significantly worsen his symptoms." (Exhibit 1, p. 98) Claimant testified credibly that he has limited tolerance for physical activities, and is unable to stand or sit for lengthy periods of time because of the pain and swelling. Claimant stated that the pain is so acute at times that his vision is affected.

Claimant's past relevant work inc luded carpentry and RV park manager. Given the functional requirements as stated by Claimant for these jobs (which is consistent with how these jobs are typically performed), and Claimant's functional limitations as described above, this Administrative Law Judge concludes that Claimant does not retain the capacity to perform his past relevant work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's im pairment(s) prevents Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

- (1) residual functional capacit y defined simply as "what can you st ill do desp ite your limitations?" 20 CF R 416.945;
- (2) age, educ ation, and wo rk experience, 20 CF R 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, CI aimant has already established a *prima facie* case of

disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the Claimant has the residual functional capacity for substantial gainful activity.

For the purpose of determining the exerti onal requir ements of work in the national economy, jobs are classified as "sedentar y", "light", "medium", "heavy", and "very heavy." 20 CFR 416.967. These terms have the same meaning as are used in the Dictionary of Occupational Titles. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carry ing articles like docket files, ledgers, and small tools. 20 CFR 416.96 7(a) Although a sedentary j ob 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 CF R 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walk ing 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 wor k, an individual must have the ability to do *Id.* An individual capable of light work is also substantially all of these activities. capable of sedentary work, unles s there are additionally limitin g 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 CF R 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 tim e with frequent lifting or carrying of object s weighing up to 50 pounds. 20 CF R 416.967(d) An individual capable of heavy work is also c apable of medium, light, and sedentary work. Id. Finally, very heavy work involves lifting objects with frequent lifting or carrying objects weighing more than 100 pounds at a time 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 requirements, i.e. sitting, strength demands (exertional standing, walk ing, lifting, carrying, pushing, or pulling) are consider ed nonexertional. 20 CF R 416.969a(a) In considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional c apacity with the demands of past relevant work. ld. If an individual can no longer do past relevant work the same residual functional capacity ge, education, and work experience is assessment along with an individual's a 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 function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tole rating some physical f eature(s) of certain

work settings (i.e. can't tolera te 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-e xertional aspects of work-related activities, the rules in Appendi x 2 do n ot direct factual conclusions o f disabled or not disabled. 20 CFR 416. 969a(c)(2) The determination of whether disability e xists is b ased upon the princi ples in the appropriate sections of the regulations, giving consideration to the rules for r specific case situat ions in Appendix 2. *Id.*

In order to evaluate t he Claimant's skills and to help determine the existence in th e national economy of work the Claimant is able to do, occ upations are classified as unskilled, semiskilled and skilled. SSR 86-8.

Claimant is 32 years old, with a high school education, and a history of skilled and semiskilled work as a carpenter and RV park manager, performed at the light to heavy levels. (20 CFR 416.967). Claimant's medica I records are consistent with Claimant's testimony that Claimant is unable to engage in even a full range of sedentary work. See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

The Department has failed to provide vocational evidence which establishes that the Claimant has the residual functional capacity for substantia I gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordin gly, this A dministrative Law Judge concludes that Claimant is disabled for purposes of the MA program.

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The 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 Reference Tables Manual (RFT).

A person is consider ed disabled for purposes of SDA if the person has a physical or mental impairment which meet s federal SSI disability standar ds for at least 90 days. Receipt of SSI or RSDI benefit s based upon disability or blin dness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies a n individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, he must al so be found "disabled" for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA -P and SDA benef it programs, as of April 1, 2011.

Accordingly, it is ORDERED:

- 1. The Department's determination is REVERSED.
- 2. The Department shall initiate processing of the December 6, 2011application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
- 3. The Department shall supplement fo r any lost benef its that Claimant was entitled to receive if otherwise eligible, in accordance with Department policy.
- 4. The Department shall review the Claimant's continued eligibility December of 2013, in accordance with Department policy.

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Susan C. Burke Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: October 19, 2012

Date Mailed: October 19, 2012

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

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 ti mely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration MAY be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Re Michigan Administrative hearings consideration/Rehearing Request

P. O. Box 30639 Lansing, Michigan 48909-07322

SCB/ctl

