

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

IN THE MATTER OF:



Reg. No.: 201276290
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: December 12, 2012
County: Berrien

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on September 12, 2012. After due notice, a telephone hearing was held on December 12, 2012. 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 Claimant personally appeared and provided testimony along with [REDACTED]. The Department was represented by [REDACTED].

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant no longer meet the disability standard for Medical Assistance based on disability (MA-P) 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. The Claimant was an ongoing Medical Assistance (MA) and State Disability Assistance (SDA) recipient.
2. The Department conducted a routine review of the Claimant's eligibility to receive benefits based on disability in June of 2012.
3. On August 29, 2012, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA) because it determined that his condition had improved.

4. On September 4, 2012, the Department sent the Claimant notice that it had denied the application for assistance.
5. On September 12, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
6. On October 22, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) and State Disability Assistance (SDA) benefits.
7. On January 30, 2012, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
8. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
9. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
10. The Claimant is a [REDACTED]-year-old man whose birth date is [REDACTED]. Claimant is 6' 3½" tall and weighs 148 pounds. The Claimant has a high school equivalent education. The Claimant is able to read and write and does have basic math skills.
11. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
12. The Claimant has past relevant work experience as a maintenance supervisor where he was required to stand for up to four hours at a time and lift objects weighing as much as 100 pounds.
13. The Claimant alleges disability due to chronic pain, back and hip problems, and leg fatigue.
14. The objective medical evidence indicates that the Claimant is capable of standing for up to 30 minutes continuously and walking for up to 20 minutes.
15. The objective medical evidence indicates that the Claimant walks with a moderate limp on the right side without an assistive device.
16. The objective medical evidence indicates that the Claimant has a reduced range of motion of his right hip adduction, forward flexion, backward extension, internal rotation, and external rotation, as well as tenderness.
17. The objective medical evidence indicates that the Claimant has a history of arthralgias, but is capable of unassisted ambulation.

18. The objective medical evidence indicates that the Claimant has modest disuse motor weakness noted in the right thigh musculature.
19. The objective medical evidence indicates that the Claimant has a history of dyspnea.
20. The objective medical evidence indicates that the Claimant has a measured forced vital capacity (FVC) of 4.97, and a forced expiratory volume (FEV1) of 3.51.
21. The objective medical evidence indicates that the Claimant's forced vital capacity is normal, his forced expiratory volume (FEV1) is normal, his forced expiratory volume (FEV1%) is reduced, and his forced expiratory flow (FEF) is reduced.
22. The objective medical evidence indicates that the Claimant's peak flow is reduced, flow volume loop is abnormal, and there is a mild obstructive defect, but results may be sub-optimal due to patient difficulty performing the test.
23. The objective medical evidence indicates that there is slight kyphosis at the L1-2 level, there is diffusely bulging discs from L1-L2, bulging annulus fibrosis at the T12-L1, level lumbar spondylosis with multilevel foraminal and central canal stenosis.
24. The objective medical evidence indicates that there is evidence of old healed fractures of the right superior and inferior pubic rami on the right side as well as the intratrochanteric right femur, but no acute fracture was seen.
25. The objective medical evidence indicates that the Claimant's active ranges of motion do not produce a painful arc of motion. There is a light pain with straight leg raise, strength was observed a 5/5 with all resisted movements.
26. The objective medical evidence indicates that the Claimant demonstrates a slight antalgic gait pattern and his hip pain stems from radiculopathy from his back.
27. The objective medical evidence indicates that the Claimant has degenerative disc disease at the L5-S1 level, bilateral hip joint space narrowing, but no acute lumbosacral spine bone abnormalities.
28. The Claimant smokes 10 cigarettes on a daily basis.
29. The Claimant drinks alcoholic beverages on a daily basis.
30. The Claimant is capable of preparing meals and shopping for groceries.
31. The Claimant is capable of washing dishes and laundry.

32. The Claimant enjoys fishing on a monthly basis.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (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 Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. 20 CRR 416.994.

First, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

The Claimant's impairment failed to meet the listing for a back injury under section 1.04 Disorders of the spine, because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for hip pain or leg fatigue under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant's impairment involves a weight bearing joint resulting in inability to ambulate effectively, or an impairment of an upper extremity resulting in inability to perform fine and gross movements effectively.

The Claimant's impairment failed to meet the listing under section 3.02 Chronic pulmonary insufficiency because the objective medical evidence does not demonstrate a forced expiratory volume (FEV1) of 1.55 or less or a forced vital capacity (FVC) of 1.85 or less. The objective medical evidence indicates that the Claimant has a measured forced vital capacity (FVC) of 4.97 and a forced expiratory volume (FEV1) of 3.51.

The medical evidence of the Claimant's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

Second, the Claimant's impairments are evaluated to determine whether there has been medical improvement as shown by a decrease in medical severity. Medical improvement is defined as any decrease in the medical severity of the impairment(s), which was present at the time of the most recent favorable medical decision that the Claimant was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Claimant's impairment(s).

The objective medical evidence indicates that the Claimant is capable of unassisted ambulation. The objective medical evidence indicates that the Claimant's forced vital capacity volume, forced expiratory, and peak lung flow are normal.

This Administrative Law Judge finds that there has been medical improvement as shown by a decrease in medical severity.

Third, the Claimant's medical improvement is evaluated to determine whether it is related to your ability to do work.

The objective medical evidence indicates that the Claimant walks with a moderate limp on the right side without an assistive device. The objective medical evidence indicates that the Claimant has reduced range of motion of his right hip adduction, forward flexion, backward extension, internal rotation, and external rotation. The objective medical evidence indicates that the Claimant has modest disuse motor weakness.

This Administrative Law Judge finds that the Claimant's improvement is related to his ability to perform work.

Fourth, the Claimant's impairments are evaluated to determine whether current impairments result in a severely restrictive physical or mental impairment.

The objective medical evidence indicates the following:

The Claimant is a [REDACTED]-year-old woman that is 6' 3½" tall and weighs 148 pounds. The Claimant is capable of standing for up to 30 minutes continuously and walking for up to 20 minutes. The Claimant walks with a moderate limp on the right side without an assistive device. The Claimant has a reduced range of motion of his right hip adduction, forward flexion, backward extension, internal rotation, and external rotation. The Claimant has a history of arthralgias, but is capable of unassisted ambulation. The Claimant has modest disuse motor weakness noted in the right thigh musculature. The Claimant has a history of dyspnea. The Claimant has a measured forced vital capacity (FVC) of 4.97, and a forced expiratory volume (FEV1) of 3.51. The Claimant's vital capacity is normal, his forced expiratory volume (FEV1) is normal, but his forced expiratory volume (FEV1%) and forced expiratory flow (FEF) are reduced. There is slight kyphosis and diffusely bulging discs at the L1-2 level. The Claimant has degenerative disc disease at the L5-S1 level, bilateral hip joint space narrowing, but no acute lumbrosacral spine bone abnormalities.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that meets the severity and duration standard for MA-P and SDA purposes.

Fifth, the Claimant's impairments are evaluated to determine whether you can still do work you have done in the past.

The Claimant has past relevant work experience as a maintenance supervisor where he was required to stand for up to four hours at a time and lift objects weighing as much as 100 pounds. The Claimant's prior work fits the description of heavy work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work in which he has engaged in, in the past.

Sixth, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do light or sedentary tasks if demanded of him. The Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments for a period of 12

months. The Claimant's testimony as to his limitations indicates that he should be able to perform sedentary work.

Claimant is 48-years-old, a younger person, under age 50, with a high school equivalent education and above, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work, and Medical Assistance (MA) and State Disability Assistance (SDA) is denied using Vocational Rule 20 CFR 201.21 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department's Program 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 261. Because the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that the Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's continued disability and application for Medical Assistance and State Disability Assistance benefits. The Claimant should be able to perform sedentary-unskilled work. The Department has established its case by a preponderance of the evidence. The Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the Department's decision is **AFFIRMED**.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 19, 2013
Date Mailed: February 19, 2013

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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

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

- A rehearing **MAY** 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

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

KS/tb

cc:

