

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-14501
Issue No: 2009

[REDACTED]

[REDACTED] : [REDACTED]

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 [REDACTED]. The claimant appeared and provided testimony along with [REDACTED]. [REDACTED] provided testimony on behalf of the department.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) application?

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 [REDACTED] claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On [REDACTED] the MRT denied.
4. On [REDACTED] the DHS issued notice.
5. On [REDACTED] claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he has an SSI application pending with the Social Security Administration (SSA).

7. On [REDACTED], the State Hearing Review Team (SHRT) denied claimant. The record was left open for the submission of new and additional medical documentation at claimant's request. However, nothing was received by the claimant, so the record was closed without additional information.
8. As of the date of hearing, claimant was a [REDACTED] standing 5'10" tall and weighing approximately 300 pounds. Claimant has a high school education.
9. Claimant testified that he smokes approximately three cigarettes per day, does not drink alcohol and does not use illegal drugs.
10. Claimant testified that has a driver's license and can drive an automobile, although it is somewhat limited.
11. Claimant is not currently working. Claimant last worked in [REDACTED] installing tires on vehicles. Claimant worked in a tire shop, full time for 12 years. He performed duties such as installing tires, answering the phones, paying the bills, filling propane tanks, ordering supplies and general maintenance. Prior to that, claimant also worked in metal shops.
12. Claimant alleges disability on the basis of a bilateral shoulder injury and arthritis.
13. A [REDACTED] MRI of the cervical spine conducted due to neck pain, found moderate degenerative disk disease at C4 to C5, C5 to C6 and C6 to C7 levels. It also found cervical spondylosis with small marginal osteophyte formation at the uncovertebral joints causing mild bilateral neural foramen narrowing at C4 to C5, C5 to C6 and C6 to C7 levels. No acute intervertebral disk herniation was seen. No central spinal stenosis was seen.
14. On [REDACTED] the claimant consulted with a pain management clinic. The claimant was seen for pain in the shoulders, bilaterally that radiated down his arms and pain and weakness in his hands particularly in both thumbs. Physical examination found cervical range of motion was full, upper extremity strength, hand grip, shoulder abduction/adduction, elbow flexion/extension 5/5. Deep tendon reflexes are +2, biceps, triceps, brachioradialis bilaterally. Shoulder range of motion is full. Mild tenderness over the subdeltoid bursa area. On palpation of the hands, his area of maximum discomfort is the carpal metacarpal joint of the first digits bilaterally. He has minimal tenderness on the right, no tenderness on the left. The physician opined that it was probably of arthritic nature or bursitis in nature. The claimant was given a bilateral subdeltoid bursa injection.

15. On [REDACTED] the claimant underwent an x-ray of the left shoulder. The impression was mild changes of osteoarthritis involving the acromioclavicular joint and significant osteoarthritis of the glenohumeral joint.
16. An orthopedic progress note dated [REDACTED] indicates the client had pain with impingement in the left and less so about the right. He had full range of motion of his shoulder. He had no weakness on exam. He was not tender about the biceps region and very minimally tender about the AC joint on exam. He had painful internal and external rotation of the left more as compared to the right. Grip strength was equivocal and he was neurovascularly stable.
17. A [REDACTED] orthopedic progress note found examination of the right shoulder forward flexion to 140 to 150 degrees, abduction to about 85 degrees horizon with scapular correction. External rotation 30. Internal rotation just to neutral. Left shoulder forward flexion to 140 and abduction 85. External rotation 20 and internal rotation a little bit better than on the right just to the sacrum or L5. The impression was osteoarthritis of the shoulder, right more symptomatic than left; cervical disc disease and suspect arthritis of the hands and thumbs.
18. A [REDACTED] medical statement from the claimant's treating physician indicates that the claimant is able to perform some job duties, but must avoid lifting heavy objects.
19. On [REDACTED] [REDACTED] [REDACTED] the claimant underwent an independent psychiatric/psychological medical evaluation. The claimant's mood was depressed and he was in contact with reality. There was no unusual motor activity or hyperactivity. 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, delusions, obsessions, persecutions or unusual powers. He denied feelings of worthlessness or suicidal ideation. Results of the mental status examination revealed no abnormalities in mental capacity. He did appear to be struggling with depression and overall discouragement with life due to his current situation and financial struggles. His ability to relate and interact with others, including co-workers and supervisors was fair. His ability to understand, recall and complete tasks and expectations does not appear to be significantly impaired. His ability to maintain concentration was fair and his ability to withstand the normal stressors associated with a work place setting was not impaired. He was diagnosed with an adjustment disorder with depressed mood and assigned a Global Assessment of Functioning (GAF) of 75.

20. On [REDACTED] the claimant underwent an independent physical examination. Physical examination found no clubbing or cyanosis. The peripheral pulses were intact and there was no peripheral edema. Varicose veins were not seen. Full use of the hands was noted. The patient could button a button, pick up a coin and open a door. He was able to touch his toes. He did have crepitus on the right and left lateral flexion of the neck. He had tenderness to palpation of the neck and at both shoulders more so on the left shoulder than the right. The client had mild difficulty getting on and off the exam table; mild difficulty heel and toe walking; and severe difficulty squatting. Romberg testing was negative and sensation was intact. Motor strength was 5/5. Reflexes were symmetrical and no disorientation was noted. The client had significant degenerative changes at multiple levels of the neck and at both shoulders. The left shoulder was the worst. He cannot use his arms overhead very well, he cannot push or pull for long and he can use a hand saw to cut one piece of board and then stop. He can lift 30 pounds.

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. Despite the claimant's impairments, the claimant remains capable of simple, unskilled, light work that avoids frequent overhead reaching.

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 claimant's previous relevant work was clearly of a higher exertional level than the claimant is capable of at this time. The claimant's previous relevant work involved heavy lifting that the claimant would not be capable of now. Therefore, the analysis continues.

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 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. Under the Medical-Vocational guidelines, an individual closely approaching advanced age, with a high school education or more and an unskilled or semi-skilled

work history, who can perform at least light work, is not considered disabled pursuant to Medical-Vocational Rule 202.13 or 202.14.

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/ _____
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

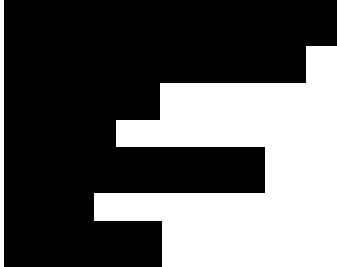
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final 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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MAHS