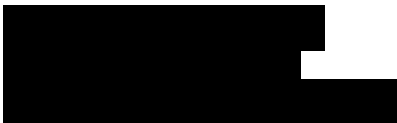


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-33959
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 10, 2012
County: Calhoun County

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on February 21, 2012. After due notice, a telephone hearing was held on May 10, 2012. Claimant, and his mother, personally appeared and testified.

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 December 27, 2011, Claimant applied for MA-P, Retro-MA, and SDA.
- (2) On February 7, 2012, the Medical Review Team (MRT) denied Claimant's MA application indicating Claimant was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied due to lack of duration. (Department Exhibit A, pp 57-58).
- (3) On February 9, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On February 21, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On March 28, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform a narrow range of light exertional work. (Department Exhibit B).
- (6) Claimant has a history of a broken right shoulder.
- (7) Claimant is a 40 year old man whose birthday is [REDACTED] Claimant is 6'1" tall and weighs 242 lbs. Claimant completed a high school equivalency degree. Claimant last worked on an assembly line in a factory in 2008.
- (8) Claimant had applied for Social Security disability 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 April 2008. 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 a broken right shoulder.

On December 9, 2011, Claimant went to the emergency department complaining of right shoulder pain. Claimant had an obvious palpable deformity noted to the right proximal humerus. He had some anterior fullness noted and some loss of contour. He had pain with palpation and he had difficulty shrugging his shoulders secondary to pain, but was able to make a full fist and also had full range of motion at his elbow, but he stated that it caused pain in his shoulder area. A 2-view right shoulder x-ray showed an anterior dislocation. Claimant's shoulder was reduced and he was placed in a sling. Post-reduction x-rays were obtained and his shoulder appeared to be in place. Claimant was advised to keep his arm in a sling for a week and to follow-up with his primary care physician.

On December 10, 2011, Claimant returned to the emergency department complaining of pain in his right shoulder. Claimant stated he believed his shoulder had popped back out but he was uncertain. His right shoulder x-ray was repeated and was negative for re-dislocation, but tuberosity fractures were still identified. Claimant was prescribed Norco and instructed to continue wearing the sling and contact his primary care physician.

On December 12, 2011, Claimant was seen in the emergency department for a recheck of his right shoulder. Claimant's x-rays were reviewed showing tuberosity fractures. Claimant was told that his ecchymosis was normal and would be clearing and he was referred to the orthopedic surgeon.

On December 19, 2011, Claimant was evaluated by an orthopedic surgeon for right shoulder pain. Claimant is right hand dominant. He was seen in the emergency room and x-rays were taken on 12/9/11 that show a greater tuberosity fracture with minimal displacement. Claimant was in mild discomfort sitting on the examining table. His right shoulder had some mild ecchymosis and some dependent ecchymosis down into the medial aspect of the upper arm. Claimant was instructed to continue wearing the sling and begin pendulum exercises when comfortable. His surgeon also provided him with a note for left handed work only, with no work using his right upper extremity.

On December 29, 2011, Claimant saw his primary care physician for pain in his right shoulder. Claimant stated the pain was preventing him from sleeping and the Ultram was not helpful, but the Vicodin had provided a little relief. Claimant was prescribed more Vicodin and instructed to follow-up with his orthopedic surgeon.

Claimant testified during the hearing that he can walk 2 miles, stand for 5 hours, sit for 8 hours, and lift and carry 15 pounds with his left arm.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). There is no objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical impairment that has lasted or is expected to last at least 12 months, consecutively. While Claimant does appear to suffer from the effects of a dislocated right shoulder, he was instructed to start on physical therapy in December 2011, as soon as he was comfortable. Furthermore, Claimant's surgeon indicated Claimant was fully capable of working using his left arm only and Claimant's own testimony indicates he is washing windows and vacuuming using his left arm. Therefore, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

Claimant has not presented the required competent, material and substantial evidence which would support a finding that Claimant has a severe impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for 12 months in a row. 20 CFR 416.920(c); 20 CFR 404.1521. Although Claimant has cited a medical problem, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. Therefore, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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 Claimant was not eligible to receive Medical Assistance, Retroactive Medical Assistance and State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant is not disabled for purposes of the MA-P, Retro-MA and SDA benefit programs.

Accordingly, the department's determination is AFFIRMED.

It is SO ORDERED.

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

Date Signed: 6/1/12

Date Mailed: 6/1/12

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.

VLA/ds

■ [REDACTED]