

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

IN THE MATTER OF:



Reg. No: 201239095
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: June 12, 2012
Calhoun County DHS

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 March 12, 2012. After due notice, a telephone hearing was held on Tuesday, June 12, 2012. The Claimant personally appeared and provided testimony.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not 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. On December 29, 2011, the Claimant submitted an application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits alleging disability.
2. On February 28, 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 he is capable of performing other work despite his impairments.
3. On March 1, 2012, the Department sent the Claimant notice that it had denied the application for assistance.
4. On March 12, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On April 25, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P and SDA benefits.
6. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
7. 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.
8. The Claimant is a 49-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 320 pounds. The Claimant attended college and was awarded an associated degree. The Claimant is able to read and write and does have basic math skills.
9. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
10. The Claimant has past relevant work experience as a chef where he was required to prepare meals, write menus, lift up to 100 pounds, and stand for up to 4 hours at a time.
11. The Claimant alleges disability due to chronic obstructive pulmonary disease, low testosterone, diabetes, and sleep apnea.
12. The objective medical evidence indicates that the Claimant has hypertension that is being controlled with medication.
13. The objective medical evidence indicates that the Claimant is capable of unassisted ambulation.
14. The objective medical evidence indicates that the Claimant has severe obstructive sleep apnea with an excellent response to 15 cm of nasal continuous positive airway pressure (CPAP).
15. The objective medical evidence indicates that the Claimant has pulmonary vascularity that is within normal limits.
16. The objective medical evidence indicates that on April 29, 2011, the Claimant's pulmonary function was tested and he was found to have a forced expiratory volume at 1 second (FEV1) of 1.7 liters, 2.1 liters, 1.7 liters, 1.4 liters, and 1.5 liters during each of the five tests conducted. The Claimant's forced vital capacity (FVC) level was found to be 1.3 liters, 2.6 liters, 2.6 liters, 2.5, liters, and 2.3 liters during each of the five tests conducted.

17. The objective medical evidence indicates that on March 16, 2012, the Claimant's pulmonary function was tested and he was found to have a FEV1 of 2.2 liters. The Claimant's FVC level was found to be 3.46.
18. The objective medical evidence indicates that the Claimant smokes up to a pack of cigarettes on a daily basis.
19. The Claimant is a licensed driver and is capable of driving.
20. The Claimant is capable of preparing meals, shopping for groceries, washing dishes, sweeping floors, mopping floors, and cleaning bathrooms.
21. The Claimant is capable of fishing, bowling, travelling, and bird watching.
22. The Claimant is capable of walking a half mile, standing for up to 2 hours, and sitting for up to 2 hours.

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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.
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 not disabled.
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? If no, the analysis continues to Step 4.
4. Can the client do the former work that he performed within the last 15 years? If yes, the client is not disabled.
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? If yes, client is not disabled.

At step one, the undersigned must determine whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight

abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the Claimant has the residual functional capacity to perform the requirements of his 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 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.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the Claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, he is not disabled. If the Claimant is not able to do other work and meets the duration requirement, he is disabled.

STEP 1

At Step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity is defined as work activity that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled

regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience. Whether the Claimant is performing substantial gainful activity will be determined by federal regulations listed in 20 CFR 416.971 through 416.975.

The Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

At Step 2, the Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months.

The Claimant is a 49-year-old man that is 5' 10" tall and weighs 320 pounds. The Claimant alleges disability due to chronic obstructive pulmonary disease, low testosterone, diabetes, and sleep apnea.

The objective medical evidence indicates the following:

The Claimant is capable of unassisted ambulation.

The Claimant has severe obstructive sleep apnea with an excellent response to 15 cm of nasal continuous positive airway pressure (CPAP). The Claimant has pulmonary vascularity that is within normal limits.

The objective medical evidence indicates that on April 29, 2011, the Claimant's pulmonary function was tested and he was found to have a forced expiratory volume at 1 second (FEV1) of 1.7 liters, 2.1 liters, 1.7 liters, 1.4 liters, and 1.5 liters during each of the five tests conducted. The Claimant's forced vital capacity (FVC) level was found to be 1.3 liters, 2.6 liters, 2.6 liters, 2.5, liters, and 2.3 liters during each of the five tests conducted. The objective medical evidence indicates that on March 16, 2012, the Claimant's pulmonary function was tested and he was found to have a FEV1 of 2.2 liters. The Claimant's FVC level was found to be 3.46.

The Claimant has hypertension that is being controlled with medication.

The Claimant smokes up to a pack of cigarettes on a daily basis.

The Claimant is a licensed driver and is capable of driving. The Claimant is capable of preparing meals, shopping for

groceries, washing dishes, sweeping floors, mopping floors, and cleaning bathrooms. The Claimant is capable of fishing, bowling, travelling, and bird watching. The Claimant is capable of walking a half mile, standing for up to 2 hours, and sitting for up to 2 hours.

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.

STEP 3

At Step 3, 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 chronic obstructive pulmonary disease (COPD) under section 3.02 Chronic pulmonary insufficiency, because the objective medical evidence does not demonstrate that he has a forced expiratory volume at 1 second (FEV1) of less than 1.55 for a person that is 70 inches tall. The objective medical evidence does not demonstrate that he has a forced vital capacity (FVC) level that was less than 1.75 for a person that is 70 inches tall.

The Claimant's impairment failed to meet the listing for sleep apnea under section 3.10 Sleep-related breathing disorders because the objective medical evidence does not demonstrate that he has a mean pulmonary artery pressure greater than 40 mm Hg., or that he suffers from arterial hypoxemia. The objective medical evidence indicates that the Claimant has hypertension that is being controlled with medication.

The Claimant's impairment failed to meet the listing for diabetes under section 9.00 Endocrine disorders, because his impairments do not meet or medically equal a listing in another body system.

Low testosterone does not fit the description of an impairment listed in the federal code of regulations.

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.

STEP 4

At Step 4, the Claimant's residual functional capacity (RFC) is examined to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

After careful consideration of the entire record, the undersigned finds that the Claimant has the residual functional capacity to perform light or sedentary as defined in 20 CFR 404.1567(b) and 416.967(b).

The Claimant has past relevant work experience as a chef where he was required to prepare meals, white menus, lift up to 100 pounds, and stand for up to 4 hours at a time. The Claimant's prior work fits the description of 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(a).

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.

STEP 5

At Step 5, 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).

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 light or sedentary work.

Claimant was 49-years-old when he submitted his application for assistance, a younger person, under age 50, with a high school education and above, and a history of semi-skilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work or light work, and Medical Assistance (MA) and State Disability Assistance (SDA) is denied using Vocational Rule 20 CFR 202.21 as a guide.

If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case.
20 CFG 416.963(b).

If the Claimant's impairments are examined as a 50-year-old person, a person closely approaching advanced age, 50-54, with a high school education and above, and a history of semi-skilled work, and a residual functional capacity to perform sedentary work or light work, then Medical Assistance (MA) and State Disability Assistance (SDA) are denied using Vocational Rule 20 CFR 202.14 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 the Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The Claimant should be able to perform a wide range of light or sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

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

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

Date Signed: June 25, 2012

Date Mailed: June 25, 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 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.

KS/tb

cc:

