

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-48152
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: July 18, 2012
County: Branch

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on July 18, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

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 new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On October 8, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for State Disability Assistance (SDA) benefits?

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 February 10, 2012, Claimant filed an application for SDA benefits alleging disability.
- (2) On April 12, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P, indicating that Claimant alleged impairments lack duration. (Department Exhibit A, pp 83-84).

- (3) On April 16, 2012, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On April 19, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 4, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating the medical evidence did not document the presence of a psychiatric condition or the presence of a severe physical impairment. (Department Exhibit B).
- (6) Claimant has a history of no ACL in his right knee, a broken ankle, sciatic nerve problems, obstructive sleep apnea, obesity, diabetes, neuropathy, carpal tunnel syndrome and depression.
- (7) Claimant is a 33 year old man whose birthday is [REDACTED]. Claimant is 6'0" tall and weighs 250 lbs. Claimant completed high school. He has not worked since 2009.
- (8) Claimant had applied for Social Security disability benefits 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, Claimant is not involved in substantial gainful activity and testified that he has not worked since 2009. 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 no ACL in his right knee, a broken ankle, sciatic nerve problems, obstructive sleep apnea, obesity, diabetes, neuropathy, carpal tunnel syndrome and depression.

On March 22, 2011, Claimant went to the emergency room complaining of a cough he had had for almost two weeks. He was diagnosed with acute bronchitis and prescribed Albuterol and Trimethoprim-Sulfamethoxazole. It was noted Claimant is a smoker. His condition at discharge was unchanged and stable.

On October 1, 2011, Claimant presented to the emergency room complaining of an injury to his wrist that he had twisted a month ago. There was no swelling, tingling, numbness, weakness or foreign body. No skin laceration. He was in acute distress. He denied any pain with palpitation of wrists and no pain with passive range of motion, but mild deep pain with active range of motion against resistance. X-rays were normal and revealed no acute disease. He denied the offer of a wrist splint. He was diagnosed with a probable sprained right wrist and acute pain in his right wrist. He was prescribed Naproxen and discharged in stable condition.

On November 19, 2011, Claimant went to the emergency room complaining of back pain. He has muscle spasms of the back and soft tissue tenderness. He also had limited range of motion in his back. X-rays of his lumbar spine are normal and reveal no acute disease. Claimant was diagnosed with an acute cervical strain, lumbar strain and acute right sided sciatica and prescribed Vicodin and Flexeril and discharged.

On January 18, 2012, Claimant presented to the emergency room with an injury to his right knee. He was diagnosed with acute pain in right knee and a probable sprained right knee. X-rays of his right knee revealed a stable small suprapatellar effusion. He was instructed to apply ice 4-6 times a day and prescribed Ibuprofen and Ultram and discharged.

On June 22, 2012, Claimant underwent a medical examination by the Disability Determination Service. Claimant's chief complaints were sleep apnea, carpal tunnel syndrome, diabetes, vision, depression, arthritis and back injury. A review of the chart by the examining physician showed Claimant did have imaging studies which did not show an occult fracture to the knee, but an occult meniscus tear was suspected. He stated he did sustain an ACL tear and he did have a mild effusion in the joint without warmth. Drawer sign was negative however. He did have associated weakness due to pain. In regards to his left ankle, he did sustain a distal fibular fracture and this appears to be stable. In regards to Claimant's back, this apparently was due to an assault. He does complain of a nondermatomal sensory loss at the right leg which the physician did not believe was referred pain. Again, Claimant's imaging studies did not show any occult fractures or degeneration. He did have some postural kyphosis. Some of his symptoms do appear to be due to deconditioning. His upper extremities were stable with the exception of his shoulders, which again were suspected to be due to inactivity. At this point, he does walk with a guarded, wide based gait. At least in the short term a cane may be beneficial for pain control. He would benefit from physical therapy and anti-inflammatories. Addressing his underlying depression would also be indicated as this is aggravating his symptoms.

On August 22, 2012, Claimant underwent a psychological evaluation. Diagnosis: Axis I: Post traumatic stress disorder, by report; Axis III: Sleep apnea, diabetes, emphysema, knee pain, by Claimant report; Axis IV: Primary support, occupational, economic, legal; Axis V: GAF=55. Prognosis is fair. Based on the exam, the psychiatrist opined that Claimant's ability to recall words and numbers does seem to be impaired, and so work tasks would be limited to simple, routine and repetitive tasks. Due to his mistrust of the law, this may lead to further mistrust of others and may significantly interfere with his relationships in the workplace.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that he had no ACL in his right knee, a broken ankle, sciatic nerve problems, obstructive sleep apnea, emphysema, bronchitis, paranoia and carpal tunnel syndrome. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

The department's Bridges 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, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the SDA benefit program.

Accordingly, it is ORDERED that the Department's determination is **AFFIRMED**.

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

Date Signed: October 31, 2012

Date Mailed: October 31, 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 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 mailing date of the rehearing decision.

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