

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

IN THE MATTER OF:



Reg. No: 201252042
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: August 7, 2012
Ingham 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 May 14, 2012. After due notice, a telephone hearing was held on August 7, 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 March 20, 2012, the Claimant submitted an application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits alleging disability.
2. On April 24, 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 May 2, 2012, the Department sent the Claimant notice that it had denied the application for assistance.
4. On May 14, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On July 11, 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 was born on [REDACTED], and is 6' 0" tall and weighs 200 pounds. The Claimant is a [REDACTED] and attended some college. 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 [REDACTED] where he was required to load/unload trucks, lift objects weighing as much as 97 pounds, and drive a truck for up to 2 hours at a time.
11. The Claimant alleges disability due to arthritis, degenerative disc disease, hypertension, hepatitis C, and depression.
12. The objective medical evidence indicates that the Claimant has been diagnosed with depression and alcohol dependence.
13. The objective medical evidence indicates that the Claimant has a history of noncompliance with his medication for his mental impairments.
14. The objective medical evidence indicates that the Claimant is alert and oriented with respect to person, place, and time.
15. The objective medical evidence indicates that the Claimant's thought process is linear and his judgment is fair.
16. The objective medical evidence indicates that a screening test for posttraumatic stress disorder (PTSD) was negative.
17. The objective medical evidence indicates that on May 11, 2012, the Claimant was found to have depression, anxiety, and anger rated at 0 on a 10-point scale.
18. The objective medical evidence indicates that the Claimant has mild symptoms or some difficulty in social and occupational functioning, but generally functions pretty well.

19. The objective medical evidence indicates that the Claimant's muscle tone was graded at 4+/5 for his hips, knees, and ankles.
20. The objective medical evidence indicates that Claimant suffers form moderate osteoarthritis of both hips.
21. The objective medical evidence indicates that the Claimant reported a significant decrease in back pain following rehabilitation treatment.
22. The objective medical evidence indicates that the Claimant's vertebral body heights are maintained, there is no compression fracture or spondylolisthesis, but there is intervertebral disc height loss at the L2-3, L3-4, and L5-S1 levels with endplate spurs.
23. The objective medical evidence indicates that there is no acute fracture or dislocation of the Claimant's hip observed, but there is moderate joint space narrowing and spurs of the acetabulum and femoral head.
24. The objective medical evidence indicates that the Claimant is capable of unassisted ambulation.
25. The objective medical evidence indicates that the Claimant had a serum alcohol level of [REDACTED] on [REDACTED], after consuming more than 2 fifths of vodka on a daily basis.
26. The objective medical evidence indicates that the Claimant has a history of abusing cocaine.
27. The objective medical evidence indicates that the Claimant underwent [REDACTED].
28. The Claimant testified that he smokes a pack of cigarettes on a daily basis.
29. The Claimant testified that he resides in a group home and is capable of caring for his own personal needs.
30. The Claimant is capable of preparing meals and shopping for groceries.
31. The Claimant is capable of vacuuming floors and washing laundry.
32. The Claimant enjoys studying the bible.

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.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on 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.

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

STEP 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.

At step two, a determination is made 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.

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, or result in death.

The Claimant is a 56-year-old man that is 6' 0" tall and weighs 200 pounds. The Claimant alleges disability due to arthritis, degenerative disc disease, hypertension, hepatitis C, and depression.

The objective medical evidence indicates the following:

The Claimant has been diagnosed with depression and alcohol dependence. The Claimant is alert and oriented with respect to person, place, and time. The Claimant's thought process is linear and his judgment is fair. A screening for posttraumatic stress disorder (PTSD) was negative. On May 11, 2012, the Claimant was found to have depression, anxiety, and anger rated at 0 on a 10 point scale. The Claimant has a history of noncompliance with his medication for his mental impairments.

The Claimant's vertebral body heights are maintained, there is no compression fracture or spondylolisthesis, but there is intervertebral disc height loss at the L2-3, L3-4, and L5-S1

levels with endplate spurs. The Claimant's muscle tone was graded at 4+/5 for his hips, knees, and ankles. The Claimant suffers from moderate osteoarthritis of both hips. The Claimant reported a significant decrease in back pain following rehabilitation treatment.

There is no evidence of acute fracture or dislocation of the Claimant's hip, but there is moderate joint space narrowing and spurs of the acetabulum and femoral head.

The Claimant is capable of unassisted ambulation. The Claimant smokes a pack of cigarettes on a daily basis. The Claimant had a [REDACTED] on [REDACTED], after consuming for than 2 bottles fo vodka on a daily basis. The Claimant has a history of abusing cocaine. The Claimant resides in a group home and is capable of caring for his own personal needs. The Claimant is capable of preparing meals and shopping for groceries. The Claimant is capable of vacuuming floors and washing laundry. The Claimant enjoys studying the bible.

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

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.

At step three, a determination is made 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.

The Claimant's impairment failed to meet the listing for arthritis under section 14.09 Inflammatory Arthritis, because the objective medical evidence does not demonstrate an impairment involving a weight-bearing joint and resulting in an inability to ambulate effectively. The objective evidence does not support a finding that the Claimant lacks the ability to perform fine and gross movements with each upper extremity. The objective medical evidence indicates that the Claimant experience a significant

decrease in back pain following rehabilitation treatment. The Claimant's muscle tone was graded at 4+/5 for his hips, knees, and ankles.

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 objective medical evidence indicates that the Claimant experienced a significant decrease in back pain following rehabilitation treatment. The Claimant is capable of unassisted ambulation and is capable of caring for his personal needs.

The Claimant's impairment failed to meet the listing for depression under section 12.04 Affective disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of his activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation or that he is unable to function outside a highly supportive living arrangement. The Claimant is alert and oriented with respect to person, place, and time. The Claimant's thoughts process is linear and his judgment is fair. A screening test for posttraumatic stress disorder (PTSD) was negative. On May 11, 2012, the Claimant was found to have depression, anxiety, and anger rated at 0 on a 10-point scale. The Claimant has mild symptoms or some difficulty in social and occupational functioning, but generally functions pretty well.

In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work. If you do not follow the prescribed treatment without a good reason, we will not find you to be disabled. 20 CFR § 416.930. The Claimant has a history of noncompliance with his medication for his mental impairments.

The Claimant's impairment failed to meet the listing for hepatitis C under section 5.05 Chronic liver disease because the objective medical evidence does not demonstrate hepatitis C viral RNA in the blood for at least 6 months despite treatment with interferon injections and oral ribavirin.

The Claimant's impairment failed to meet the listing for alcoholism under section 12.02 Organic mental disorders because the objective medical evidence does not demonstrate marked restrictions of his activities of daily living or social functioning, or that he suffers from repeated episodes of decompensation.

The objective medical evidence indicates that the Claimant underwent [REDACTED] from [REDACTED]. The term repeated episodes of decompensation, each of extended duration in these listings means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks.

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

Can the client do the former work that he performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of 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, a determination is made on 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.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform sedentary or light work as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant work experience as a truck driver where he was required to load/unload trucks, lift objects weighing as much as 97 pounds, and drive a truck for up to 2 hours at a time. 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.

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.

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 the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made 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.

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 light or sedentary work.

The Claimant was able to answer all the questions at the hearing and was responsive to the questions. The Claimant was oriented to time, person and place during the hearing.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Claimant is 56-years-old, a person of advanced age, over 55, with a high school education and above, and a history of unskilled work. The Claimant has significant past relevant work experience driving a truck, which is a skill set that is transferrable to other 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 202.05 as a guide.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information contained in the file indicate that the Claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that the Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

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: September 5, 2012

Date Mailed: September 5, 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

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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

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