

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Claimant

Reg. No.: 2012 27555
Issue No.: 4031, 2009
Case No.: [REDACTED]
Hearing Date: January 17, 2012
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 January 17, 2012. Claimant appeared and testified. Claimant's Authorized Hearing Representative, [REDACTED] also appeared.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

- 1) On June 15, 2011, Claimant applied for MA-P, SDA and retro MA-P.
- 2) On August 26, 2011, the Medical Review Team denied Claimant's request. Exhibit 1, pp 2.
- 3) On September 28, 2011, Claimant submitted to the Department a request for hearing.
- 4) The State Hearing and Review Team (SHRT) denied Claimant's request on December 22, 2011. Exhibit 2
- 5) Claimant was [REDACTED] years old at the time of the hearing and his date of birth is [REDACTED] and his height is 6 feet and weight is 237 pounds.

- 6) Claimant completed education through 12th grade.
- 7) Claimant has employment experience as a driver courier of medical laboratory packs and specimens, airport shuttle driver and security guard.
- 8) Claimant's limitations have lasted or are expected to last for 12 months or more.
- 9) The Claimant has not alleged any mental disabling impairment(s).
- 10) Claimant alleged physical disabling impairments from sleep apnea, frequent urination, shortness of breath and dizziness, fatigue and severe pain in left arm and elbow with a diagnosis of reflex sympathetic dystrophy.

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 (BRM).

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that he is not currently working, and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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.
20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of law that allows the court to disregard trifling matters.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that he has significant physical limitations upon his ability to perform basic work activities such as standing, lifting, pushing, pulling, reaching, carrying or handling. Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. The [REDACTED] medical letter

of his treating physician shows that Claimant has neuropathy nerve damage of left arm/hand secondary to injury and is unable to lift over 10 pounds.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

This Administrative Law Judge consulted listing 1.01 Musculoskeletal, and 3.00 Respiratory System. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant has the residual functional capacity (RFC) to perform the requirements of Claimant's past relevant work. 20 CFR 416.920(a)(4) (iv).

An individual's residual functional capacity is the individual's ability to do physical and mental work activities on a sustained basis despite limitations from the individual's impairments. Residual functional capacity is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. Residual functional capacity is the most that can be done, despite the limitations. In making this finding, the trier of fact must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 416.920 (e) and 416.945; SSR 96-8p.) Further, a residual functional capacity assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

The term past relevant work means work performed (either as Claimant actually performed it or as it is generally performed in the national economy) within the last fifteen years or fifteen 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 substantially gainfully employed (20 CFR 416.960 (b) and 416.965.) If Claimant has the residual functional capacity to do Claimant's past relevant work, Claimant is not disabled. 20 CFR 416.960(b)(3). If 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.

The medical evidence indicates that Claimant has frequent urination problems that have not resolved with medication. The Claimant credibly testified that he urinates at least every hour daily and included logs of his urination over several days (24 hour cycle). The Claimant advised that in his security guard job the frequent urination condition caused problems as he was required to be relieved by his supervisor so he could go to the bathroom. The medical information further indicates that Claimant also has Median Nerve Compression and credibly testified as to his inability to lift with his affected left arm, experiences numbness in his hand and thumb when writing with his left hand for more than 5 minutes and experiences continual pain and throbbing in his left arm, elbow and hand when walking or standing. The Claimant is left hand dominant. The Claimant described the pain level as 8 without pain medication and 5 to 6 with medication. The Claimant credibly testified that he has limitations with standing and sitting for more than 10 to 15 minutes. Claimant has no limitations in the use of his right hand for lifting, and can lift up to 25 pounds. The Claimant indicates dizziness and breathing difficulty affecting his ability to walk very far and has dizziness when standing too long, such as when doing the dishes. Claimant has no visual limitations, and no communicative (hearing, speaking) limitations. The Claimant further described that when sitting too long he falls asleep due to his sleep apnea.

Claimants past relevant work included jobs involving driving as a medical specimen courier lifting 25 to 50 pounds, a job classified as unskilled, medium work, an airport shuttle driver lifting luggage up to 35 pounds, classified as unskilled medium work and a security guard. In the security guard position the Claimant drove 3 days a week 8 hours per day, and for two days was standing for 4 to 5 hours. The security guard job required lifting up to 25 pounds. Given this description the claimant's work as a security guard would be classified as semi skilled medium work. Therefore, given the functional requirements as stated by Claimant (which is consistent with how these jobs are typically performed) for these jobs, Claimant's functional limitations as described above, and medical records, this Administrative Law Judge concludes that Claimant does not retain the capacity to perform his past relevant work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment(s) prevents Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and

- (3) the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the Claimant has the residual functional capacity for substantial gainful activity.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as “sedentary”, “light”, “medium”, “heavy”, and “very heavy.” 20 CFR 416.967. These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant

work, a comparison of the individual's residual functional capacity with the demands of past relevant work is made. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In order to evaluate the Claimant's skills and to help determine the existence in the national economy of work the Claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

Claimant is fifty-three years old, with a high school education and a history of unskilled and semiskilled work as a driver/ courier, airport shuttle driver and security guard, respectively, (20 CFR. 416.968 (b)). These jobs were performed by the Claimant at the unskilled and semi skilled medium work levels. (20 CFR 416.967). Claimant's medical records do not contain a specific lifting restriction, though Claimant credibly testified he was unable to lift any weight with his dominant left hand, which is consistent with the medical record regarding his diagnosed reflex sympathetic dystrophy as a whole. Claimant's condition rules out frequent physical exertion, and the Claimant should avoid work that requires considerable standing, lifting, and/or walking. The medical records do not reflect that Claimant has trouble with extended periods of sitting down, or that Claimant would have trouble lifting less than ten pounds but additional documented conditions including Claimant's past medical history including Polyuria (urination at least every hour of the day, including overnight) and sleep apnea taken together limit Claimant's ability to perform overall.. Claimant's limitations are thus consistent with sedentary work, which only requires standing and/or walking two hours in an eight hour day, and lifting less than ten pounds during the course of every day work (CFR 416.967 (a)).

Individuals approaching advanced age (age fifty to fifty four) who have severe impairments that limit them to sedentary work will be found not able to make an adjustment to other work unless they have skills that can transfer to other skilled or semiskilled work that they can do despite their impairments. If the individuals

have a severe impairment that limits them to no more than sedentary work, the individuals will be found to have skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to their previous work that they would need to make very little, if any vocational adjustment in terms of tools, work process, work settings or the industry. (416.968 (d) (4)).

The Department has failed to provide vocational evidence which establishes that the Claimant has the residual functional capacity for substantial gainful activity. Given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. As indicated earlier, Claimant has the residual functional capacity to perform sedentary work.

Therefore, using a combination of Claimant's age of fifty-three, education level of high school, and previous work experience as unskilled/semi skilled, with no transferable skills, a finding of disabled is directed. 20 CFR 404, Subpart P, Appendix 2, Rule 201.02.

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 MAC R 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).

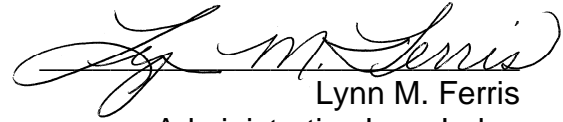
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

DECISION AND ORDER

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the June 15, 2011 application and any applicable retroactive month to determine if all other non-medical criteria are met, and inform the Claimant of the determination in accordance with Department policy.

3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in February 2013 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 3, 2012

Date Mailed: February 3, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/ hw

20127555/LMF

cc:

