

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

IN THE MATTER OF:



Reg. No.: 201276554
Issue No.: 2009
Case No.: 102576403
Hearing Date: December 4, 2012
County: Wayne

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 September 10, 2012. After due notice, an in-person hearing was held on December 4, 2012. 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 Claimant was represented during the hearing by [REDACTED] o [REDACTED], and 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) with retroactive coverage?

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 November 10, 2010, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On July 17, 2012, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that the Claimant's impairment does not meet the durational requirements.
3. On July 19, 2012, the Department sent the Claimant notice that it had denied the application for assistance.

4. On September 10, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
5. On November 2, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. On January 30, 2013, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
7. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
8. 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.
9. The Claimant is a [REDACTED]-year-old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 198 pounds. The Claimant attended two years of [REDACTED]. The Claimant is able to read and write and does have basic math skills.
10. The Claimant was not engaged in substantial gainful activity from August of 2010, through November of 2011.
11. The Claimant is currently working at least 28 hours per week at a rate of \$ [REDACTED] per hour.
12. The Claimant has relevant work experience as a factory worker where he is required to stand for long periods of time and lift objects weighing up to 15 pounds.
13. The Claimant alleges disability due to colon cancer.
14. The objective medical evidence indicates that the Claimant was diagnosed with adenocarcinoma in sigmoid colon polyp.
15. The objective medical evidence indicates that the Claimant underwent sigmoid colectomy and incidental appendectomy.
16. The objective medical evidence indicates that the Claimant was found to have a bleeding stalk on December 9, 2010.

17. The objective medical evidence indicates that the Claimant was diagnosed with a lower gastrointestinal tract (GI) bleed requiring a transfusion after the colonoscopy and polypectomy, anemia secondary to the acute gastrointestinal tract (GI) blood loss, and colon adenocarcinoma.
18. The objective medical evidence indicates that the Claimant underwent sigmoid colectomy and appendectomy on December 9, 2010, and tolerated the procedure well.
19. The objective medical evidence indicates that the Claimant experienced normal post-surgical pain that was found to be well controlled six days after the operation.
20. The objective medical evidence indicates that two and half weeks after surgery, pathology was negative for remaining malignancy.
21. The objective medical evidence indicates that the Claimant underwent a lateral internal sphincterotomy under anesthesia on July 25, 2012.
22. The Claimant smokes 5 cigarettes on a daily basis and is involved in a treatment plan to quit smoking.
23. The Claimant consumes alcohol on a daily basis.
24. The Claimant is a licensed driver and is capable of driving an automobile.
25. The Claimant is capable of preparing meals and shopping for groceries.
26. The Claimant is capable of mopping floors, cleaning toilets, making beds, and washing laundry.
27. The Claimant enjoys playing a guitar three times each week.

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).

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.

At this hearing Claimant testified that he is currently working. The Claimant receives monthly [REDACTED] in the gross monthly amount of \$ [REDACTED]. The Claimant's employment requires him to stand for long periods of time and lift objects weighing up to 15 pounds. In accordance with 20 CFR 416.971 through 416.975, Claimant is currently engaged in substantial gainful activity.

The Claimant was not engaged in substantial gainful activity from August of 2010, through November of 2011 and is not disqualified from receiving disability for this closed period of time 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 57-year-old man that is 5' 10" tall and weighs 198 pounds. The Claimant alleges disability due to colon cancer.

The objective medical evidence indicates the following:

The Claimant was diagnosed with adenocarcinoma in sigmoid colon polyp. The Claimant underwent sigmoid colectomy and incidental appendectomy. The Claimant was found to have a bleeding stalk on December 9, 2010. The Claimant was diagnosed with a lower gastrointestinal tract (GI) bleed requiring a transfusion after the colonoscopy and polypectomy, anemia secondary to the acute gastrointestinal tract (GI) blood loss, and colon cancer. The Claimant underwent sigmoid colectomy and appendectomy on December 9, 2010, and tolerated the procedure well. The Claimant experienced normal post-surgical pain that was found to be well controlled six days after the operation. Pathology was negative for remaining malignancy two and a half weeks after the surgery. The Claimant underwent a lateral internal sphincterotomy under anesthesia on July 25, 2012.

The Claimant smokes 5 cigarettes on a daily basis. The Claimant is involved in a treatment to quit smoking. The Claimant consumes alcohol on a daily basis. The Claimant is a licensed driver and is capable of driving an automobile.

The Claimant is capable of preparing meals and shopping for groceries. The Claimant is capable of mopping floors, cleaning toilets, making beds and washing laundry. The Claimant enjoys playing his guitar three times each week.

The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, Claimant is found not to be disability at this step. In order to conduct a thorough evaluation of Claimant's disability assertion, the analysis will continue.

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 colon cancer under section 13.17 Small Intestine or 13.18 Large Intestine because the objective medical evidence does not demonstrate an inoperable, unresectable, or recurrent carcinoma, sarcoma, carcinoid, or adenocarcinoma. The objective medical evidence does not support a finding of recurrent squamous cell carcinoma of the anus following surgery. The objective medical evidence does not support a finding of carcinoma, sarcoma, carcinoid, or adenocarcinoma with metastases beyond the regional lymph nodes.

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, the 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 relevant work experience as a factory worker where he is required to stand for long periods of time and lift objects weighing up to 15 pounds. The objective medical evidence supports a finding that his condition improved within a twelve month period and that he was capable of performing substantial gainful activity. The objective medical evidence does not support a finding that the Claimant was not capable of performing sedentary or light work during the entire closed period that the Claimant was not performing substantial gainful activity.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is unable 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'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 ■-years-old, a person of advanced age, over 55, with a high school education and above, and a history of unskilled 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) is denied using Vocational Rule 20 CFR 202.05 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 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.

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 and retroactive Medical 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: February 13, 2013

Date Mailed: February 13, 2013

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.

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 at

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

KS/tb

cc:

