

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201264116
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County DHS: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

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 hearing was held on [REDACTED]. The record was held open to allow Claimant to submit additional medical documentation. Claimant was represented by Attorney [REDACTED].

ISSUE

Does Claimant 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 [REDACTED], Claimant applied for MA-P and SDA benefits.
2. On [REDACTED] the Medical Review Team (MRT) denied Claimant's request for MA-P and SDA benefits.
3. On [REDACTED] the department notified Claimant that he was denied MA-P and SDA benefits.
4. On [REDACTED], the department received Claimant's hearing request, protesting the denial of MA-P and SDA benefits.
5. The State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits.

6. Claimant applied for disability benefits based on having hip, knee, and ankle problems; and Claimant's mental problems consisting of a split personality, depression and paranoid schizophrenia. (Department Exhibit A, p. 288)
7. Claimant was diagnosed with obstructive sleep apnea syndrome, periodic limb movement disorder, restless leg syndrome, and catathrenia.
8. Claimant was admitted to the hospital on [REDACTED] due to left lower extremity pain from Legg-Calve-Perthes disease; the doctor noted that Claimant is essentially "disabled", but had actually tried to start a job the day before, worked 2 hours in maintenance sweeping, and had to quit because the pain became so bad; Claimant came in using a cane; flexion/extension was about 50% of normal; he had good motion of the knee, but it was uncomfortable; abduction/adduction was very minimal; and his left lower extremity was still quite a bit short compared to the other side. (Department Exhibit A, p. 311)
9. Claimant was hospitalized from [REDACTED] with suicidal and homicidal ideations and given a final diagnosis of schizophrenia-paranoid type, and a depressive disorder.
10. On [REDACTED] Claimant was seen for a medical evaluation with a chief complaint of left leg problems; and the physical examination revealed the following: marked limitation with range of motion in the left hip joint; left lower extremity clearly shorter than the right with decreased range of motion in the left hip; atrophy clearly apparent in the left versus the right; significant limp on the left with dependency on the use of a lift in the left shoe as well as marked difficulty with orthopedic maneuvers; mild to moderate difficulty getting on and off the examination table; severe difficulty with heel and toe walking, and severe difficulty squatting. (Department Exhibit A, p. 163-165)
11. According to a progress note completed by a psychiatrist on [REDACTED], Claimant "has greatly impaired ability to perform self-sustainable employment despite his improved symptom control; additionally, he has had lack of sustained mental health stabilization despite aggressive treatment and monitoring..." (Claimant Exhibit 2)
12. Claimant is a 52 year old male with a high school education. (Department Exhibit A, p. 284)
13. Claimant has past relevant work experience as a furnace operator from [REDACTED]; he did production work in a machine shop from [REDACTED] and he was a truck driver from [REDACTED]. (Department Exhibit A, p. 284)

14. Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 (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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Current legislative amendments to the Act delineate eligibility criteria as implemented by agency policy set forth in program manuals.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 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.

"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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
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. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
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, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Since Claimant was not engaged in substantial gainful activity at any time relevant to this matter, the analysis continues.

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) Symptoms are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

In determining how a severe mental impairment affects the client's ability to work, four areas considered to be essential to work are looked at:

...**Activities of daily living** including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1., 12.00(C)(1).

...**Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, histories of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may

exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

We do not define "marked" by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Whenever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may

be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: none, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: none, one or two, three, four or more. The last is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(d).

If we rate the degree of your limitation in the first three functional areas as "none" or "mild" and "none" in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do any basic work activities. 20 CFR 416.920a(d)(1).

If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the diagnostic medical findings about your impairment(s) and the rating of

the degree of functional limitation to the criteria of the appropriate listed mental disorder. 20 CFR 416.920a(d)(2).

If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity. 20 CFR 416.920a(d)(3).

Claimant applied for disability benefits based on having hip, knee, and ankle problems; and mental problems consisting of a split personality, depression and paranoid schizophrenia. Claimant was diagnosed with obstructive sleep apnea syndrome, periodic limb movement disorder, restless leg syndrome, catathrenia, Legg-Calve-Perthes disease; and a mental impairment of schizophrenia- paranoid type, and a depressive disorder. Claimant provided objective medical evidence to establish that he has a combination of physical and mental problems that meet the severity and duration standard for MA-P and SDA purposes. Therefore, the analysis continues.

Claimant failed to establish that he has a severe impairment that meets or equals a severe impairment listed at 20 CFR, Part 404, Subpart P, Appendix 1. Therefore, the analysis continues.

Claimant provided objective medical evidence to establish that he has a combination of medical problems which compromises his ability to do his past relevant work. On [REDACTED] Claimant was admitted to the hospital due to lower left extremity pain from Legg-Calve-Perthes disease after attempting to work in maintenance for two hours. The doctor noted that Claimant is essentially "disabled" and had to quit his job because the pain was so bad. On [REDACTED], Claimant was seen for a medical evaluation with a chief complaint of left leg problems. The physical examination revealed that Claimant has marked limitation with range of motion in the left hip joint; left lower extremity clearly shorter than the right with decreased range of motion in the left hip; atrophy clearly apparent in the left versus the right; a significant limp on the left with dependency on the use of a lift in the left shoe; difficulty with orthopedic maneuvers; severe difficulty with heel and toe walking, and severe difficulty squatting. According to a progress note completed by a psychiatrist on [REDACTED], Claimant, "has greatly impaired ability to perform self-sustainable employment despite his improved symptom control; additionally, he has had lack of sustained mental health stabilization despite aggressive treatment and monitoring..."

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).

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).

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is considered an individual closely approaching advanced age with a high school education that does not provide for direct entry into skilled work, and semi-skilled work experience, skills not transferable. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. This Administrative Law Judge finds that Claimant should be able to do sedentary work despite his severe impairment.

Using Medical Vocational Rule 201.14 as a guideline, Claimant would be considered disabled. According to this Medical Vocational Rule, an individual closely approaching advanced age with a high school education that does not provide for direct entry into skilled work, and semi-skilled work experience, skills not transferable is disabled. Therefore, Claimant meets the MA-P and SDA disability standard.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant meets the MA-P and SDA disability standard.

Accordingly, the Department's MA-P and SDA decision is **REVERSED**. It is further ordered that the Department shall determine whether Claimant is otherwise eligible for MA-P and SDA based on an application date of [REDACTED]

/s/

Marya A. Nelson-Davis
Administrative Law Judge
Michigan Administrative Hearing System
for Maura Corrigan, Director
Department of Human Services

Date Signed: 04/02/2013

Date Mailed: 04/03/2013

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 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 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.

MAND/kl

cc:

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