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

IN THE MATTER OF:



Reg. No.: 2013-16136 Issue No.: 2009; 4031

Case No.: Hearing Date:

County:

March 21, 2013 Muskegon

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge upon the Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a nd appeal process. After due notice, a telephone hearing was commenced on March 21, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payment Supervisor

ISSUE

Whether the Department of Human Serv ices (the department) properly denied Claimant's application for Medical Ass istance (MA-P), Retro-MA and State Dis ability 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 October 9, 2012, Claimant applied f or MA-P, Retro-MA and SDA benefits.
- (2) On November 2, 2012, the M edical Review T eam (MRT) denie d Claimant's MA/Retro-MA and SDA appl ication indicat ing Claimant was capable of performing other work, pursuant to 20 CFR 416.920(f). (Depart Ex. A, pp 35-36).
- (3) On November 8, 2012, the department caseworker sent Claimant notic e that his application was denied.
- (4) On November 30, 2012, Claimant f iled a request for a hearing t o contest the department's negative action.

- (5) On November 30, 2012, the Stat e Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefit s indicating Claimant retains the capacity to perform light work. SDA was denied due to lack of duration. (Depart Ex. B, pp 1-2).
- (6) Claimant testified he has a history of alcohol induced hepatitis, right shoulder pain, and arthritis.
- (7) Claimant is a 53 year old man w hose birthday is Claimant is 6'0" tall a nd weighs 180 lbs. Cla imant completed the tenth grade and last worked in 2009.
- (8) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Adminis trative Manual (BAM), the Bridges Elig ibility Manual (BEM), and the Reference Tables Manual (RFT).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, et seq., and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manual s. 2004 PA 344, Se c. 604, es tablishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department sha ll operate a state di sability assistance program. Except as provided in subsection (3), persons eligible for this program shall includ e needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship re quirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A per son with a physical or mental impairment whic h meets federal SSI disab ility standards, exce pt that the minimum duration of the dis ability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor v statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to cons ider an individual's current work activit y; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experienc e) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If that an individual is disable ed, or not disabled, at a a determination cannot be made particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an indi vidual's residual functional capacity is assessed before moving from Step 3 to St ep 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual f unctional capacity is the most an indiv idual can do d espite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residual functional capacity assessment is evaluat ed at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an i ndividual's functional capac ity to perform basic work activities is evaluated and if found that the individ ual h as the ability to

perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the indi vidual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impairment or combi nation of impairments is not severe if it does not signific antly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the i ndividual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he has not worked since 2009. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individ ual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be seevere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

- Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- 2. Capacities for seeing, hearing, and speaking;
- 3. Understanding, carrying out, and remembering simple instructions;
- 4. Use of judgment;
- 5. Responding appropriately to supervision, co-workers and usual work situations; and
- 6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. Higgs v Bowen, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing Farris v Sec of Health and Human Services, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. Salmi v Sec of Health and Human Services, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disabi lity due to alcohol induced hepatitis, right shoulder pain, and arthritis.

On March 1, 2012, Claimant went to the emergency depar tment presenting with chest pain. The EKG was abnormal showing sinus tachycardia with left axis deviation and left anterior hemiblock. When co mpared to the previou s EKG on 7/7/08, the rate had increased from a normal sinus rate of 78. Cla imant was alert and or iented. He stated he had been throwing up since yest erday. He was able to hold fluids and solid foods in the emergency department. His breathing was unlabored and no distress was noted.

On October 4, 2012, Claimant presented to the emergency department complaining of pain in the right shoulder. Claimant stated that he been feeling week and dizzy over the last couple of weeks. He stated he has had pain in his right shoulder for the past several months. He stated that he is working on cutting back and guitting his alcohol consumption. Claima nt was alert and did not appear toxic or ill. His blood pressure was 162/100. He had mild tenderness in the epig astrium. He als o had som e tenderness with mov ement at t he right shoulder. T here was a fatty type of lipom a swelling to the back of his neck and he had very slight tremulousnes s with hand shaking. His EKG showed a narrow complex sinus rhythm. There were no ST segment changes indicating is chemia or strain. An ultrasound showed a fatty liv er, but no gallbladder or other pathology . The ex amining physician opined that symptoms were in part because of a withdraw type process. Imaging studies of the neck showed degenerative changes and the ches t x-ray showed clear lung fields. Claimant was diagnos ed with right shoulder pain and radicular neck pain, weakness dizziness and alcohol withdrawal. He was admin istered Ativan and given a prescription for more. He was discharged and referred to his primary care physician.

As previously noted, Claimant bears the burden to pr esent sufficient objective medical evidence to substantiate the alleged disab ling impair ment(s). As summarized abov e, Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work a ctivities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuous ly for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the indiv idual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged impairments due to alcohol induced hepatitis, right shoulder pain, and arthritis.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), and Listing 12.00 (mental disorders) were c onsidered in light of the objective evidence. Based on the foregoing, it is found to hat Claimant's impairment(s) does not meet the intent and severity requirement of a listed impai rment; therefore, Cla imant cannot be found disabled, or not disabled, at Step 3. Accordingly, Claimant's e ligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual f unctional capacity ("RFC") and pas t relevant employment. 20 CF R 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to lear n the position. 20 CFR 416.960(b)(1). Vocational fact ors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is as sessed 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. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 CFR 416.967. 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 invo Ives sit ting 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 additional 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 obj ects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capab le 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 r equirements, e.g., si tting, standing, walking, lifting , carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional capacity to the demands of past relevant work must be 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, an xiousness, or

depression; difficulty maintainin g attention or concent ration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certa in work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling stooping, climbin g, crawling, or crouching g. 20 CF R 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.

Claimant's prior work history c onsists of work as an automotive mechanic. In light of Claimant's testimony, and in co nsideration of the Occupati onal Code, Claimant's prior work is classified as semi-skilled, medium work.

Claimant testified that he is able to walk en dlessly, and can lift/carry approx imately 15-20 pounds, stand for 15 minutes and sit for two hours. If the impairment or combination of impairments does not lim it an individual's physical or mental ability to do bas ic work activities, it is not a severe impairment (s) and dis ability does not exist . 20 CFR 416.920. In consideration of Claimant's te stimony, medical records, and current limitations, Claimant cannot be found able to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individua l's residual functional capac ity and age, education, and work experience is consider ed to determine whet her an adjustment to other work can be made. 20 CFR 416.920(4)(v).

At the time of hearing, Cla imant was 53 y ears old and wa s, thus, considered to be approaching advanced age for MA-P purposes. Claimant completed the t enth grade. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that the Claimant has the residual ca pacity to substantial gainful employment. 20 CF 416.960(2): Richardson v Sec of Health and Human Services. 735 F2d 962. 964 (CA 6. 1984). While a voc ational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. O'Banner v Sec of Healt h and Hu man Services, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocationa I guidelines found at 20 CFR Subpart P. Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. Heckler v Campbell, 461 US 458, 467 (1983); Kirk v Secretary, 667 F2d 524, 529 (CA 6, 1981) cert den 461 US 957 (1983).

Where an indiv idual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whet her a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual st rength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further

diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all releva nt facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Cla imant suffers from al cohol induced hepatitis, right shoulder pain, and arthritis. The objective medical evidence lists no restrictions. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to per form at least light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.11, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability As sistance program: to receive State Disability Assist ance, a person must be dis abled, caring for a disable d person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exc eeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claim ant not disabled for purposes of the MA-P, Retro-MA and SDA benefit programs. Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.

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

Date Signed: April 11, 2013

Date Mailed: April 12, 2013

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a ti mely 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 disc overed 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 erro r, 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

VLA/las

cc: