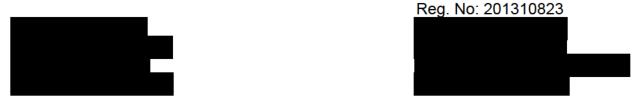
STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant 's request for a hearing. After due notice, a telephone hearing was held on Claimant appeared and testified. The Department was represented by

ISSUE

Did the Department properly deny Claimant's Medical Assi stance (MA-P) program and State Disability Assistance (SDA) applications?

FINDINGS OF FACT

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

- Claimant applied for MA -P and SDA on for retroactive coverage back to .
 The Medical Review Team denied the application on .
 Claimant filed a request for hearing on MA and SDA denials.
- 4. A telephone hearing was held on
- 5. On application because the medic all evidence of record indicates that the claimant retains the capacity to per form medium exertional tasks that avoid more than frequent use of the left upper extremity and of a simple and repetitive nature.

- 6. Claimant is 5' 9" tall and weighs 210 pounds.
- 7. Claimant is 46 years of age.
- 8. Claimant's impairments have been medic ally diagnosed as rotator cuff injury, vision and hearing problems, depression and anxiety.
- 9. Claimant has the fo llowing s ymptoms: pain, fatigue, memory and concentration problems, anxiety attacks, social isolation, suicide attempts, suicidal thoughts, crying spells, and insomnia.
- 10. Claimant completed high school.
- 11. Claimant is able to read, write, and perform basic math skills.
- 12. Claimant is not working. Claima nt last worked in boat factory.
- Claimant lives alone.
- 14. Claimant testified that he cannot perform some household chores.
- 15. Claimant takes the following prescribed medications:
 - a. b.
- 16. In a mental status examinat ion dated admission Claimant was found to have a GAF score of 20 with a diagnosis of major depressive disorder.
- 17. In a consultative ps ychological examination dated Claimant was found to have a GAF score of 70.



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 oppor tunity for a hearing shall be granted to an ap plicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting elig ibility 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 Medic al Assistance (MA-P) 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 administers the MA-P program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies are found in the Bridges Administra tive Manual (BAM), the Program Eligibility Manual (BEM) and the Bridges Reference Manual (PRM).

The Department conforms to state statute in administering the SDA program. 2000 PA 294, Sec. 604, of the statute states:

- (1) The department shall operat e a state disability as sistance 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:
 - (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
 - (b) A person with a phy sical or mental impairment whic h meets federal supplemental se curity income disability standards, exc ept that the minimum duration of the disability shall be 90 days. Sub stance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Feder al Supplemental Security Income (SSI) policy in determining el igibility for disability under the MA-P program. Under SSI, disability is defined as:

...the inability to do any substant ial 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.

Federal regulations r equire 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 indiv idual is disabled, 20 CFR 4 16.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual f unctional c apacity, 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 t he indiv idual is working and if the work is substantial gainful ac tivity. 20 CFR 416.9 20(b). In this case, the Claimant is not working, therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in consi dering whether the Clai mant is c onsidered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ab ility to perform basic work activities. Examples of these include:

- 1. Physical functions s uch as walkin g, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walk ing, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysi s, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Append ix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the 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. Listing 12.04 and 1.02 were considered.

The person claiming a physica I or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/pre scribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CRF 416.913. A conc lusory statement by a physici an or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analys is to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 yiears. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant is past employment was as a general laborer. Working as a general laborer as described by Claimant at hearing would be considered medium work. Claimant would not be able to perform his past relevant work because he is not able to do the requisite sitting, standing, walking, and lifting for medium exertional work. The is Administrative Law Judge will continue through step 5.

In the final step of the analys is, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claim ant form doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

- 1. residual fu nctional c apacity de fined simply as "what can you still do despite your 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 sig nificant numbers in the national economy which the claimant could per form despite her limitations. 20 CFR 416.966.

The residual functional capac ity is what an individual can do despite limit ations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physic al 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 a sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dicti onary of Occupational Titles, publis hed 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 lif ting 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 categor y 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 weighting up to 25 pounds. If someone can domedium work, we determine that he or she can also do sed entary and light work. 20 CFR 416.967(c).

Heavy wor k. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weig hing up to 50 pounds. If someone can do heavy wor k, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analy sis, the Claimant has already establis hed a prima fa cie case of disability. *Richardson v Secretary of Health and Hum an Services*, 732 Fd2 962 (6 th Cir, 1984). Moving forward the burden of proof rest s with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of claim ant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant retains the capacity to perform work at least on the light exertional level. The Claimant is approaching advan ced age at age 46. 20 CFR 416.963. Claimant's previous work has been unsk illed. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining dis ability based on residual functional capacity and vocational profiles. Under Table 1, Rule 202.13 the Claimant is not disabled for the purposes of MA-P and SDA. Claimant's testimony regarding his limitations and ability to sit, stand, walk, lift and c arry are not supported by substantial evidence. Claimant failed to present sufficient evidence that he has a psychological impairment that is substantially limiting.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides that Claimant is not medically disabled for the purposes of MA-P and SDA.

Accordingly, the Department's decision is hereby **AFFIRMED**.

Aaron
Administrative
for
Department

McClintic Law Judge Maura Corrigan, Director of Human Services

Date Signed: 04/22/2013

Date Mailed: 04/22/2013

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 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 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 ot her relevant iss ues in the hearing decision.

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

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

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