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

IN THE MATTER OF:



Reg. No: 201312355 Issue No: 2009, 4031

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 Cla imant appeared along with a witness, and both testified. The Depart ment was represented by , and

ISSUE

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

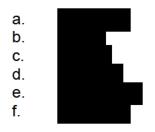
FINDINGS OF FACT

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

- 1. Claimant applied for MA-P and SDA on
- 2. The Medical Review Team denied the application on
- 3. Claimant filed a request for hearing on **Claimant** regarding the MA and SDA denials.
- 4. A telephone hearing was held on
- 5. On application because the medical evidence of record does not document a mental/physical impairment that significantly limits the Claimant's ability to perform basic work activities.
- 6. Claimant is 5' 11" tall and weighs 265 pounds.

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- 7. Claimant is 49 years of age.\
- 8. Claimant's impairments have been medically diagnosed as basal cell carcinoma, appendicitis and diabetes.
- 9. Claimant has the following sy mptoms: pain, fatigue, vision problems, balance problems, dizziness and abdominal pain.
- 10. Claimant completed high school.
- 11. Claimant is able to read, write, and perform basic math skills.
- 12. Claimant is not worki ng. Claimant last worked full time in mill.
- 13. Cla imant lives with his sister.
- 14. Claimant testified that he cannot perform household chores.
- 15. Claimant takes the following prescribed medications:



- 16. Claimant testified to the following physical limitations:
 - i. Sitting: 2-3 hours
 - ii. Standing: 30-45 minutes
 - iii. Walking: 50 yards
 - iv. Bend/stoop: difficulty
 - v. Lifting: 20 pounds
 - vi. Grip/grasp: no limitations
- 17. Claimant testified to experiencing pain at a high level of 10 on an every day basis with some pain always present at a low level of 5.
- 18. Claimant had skin excised on 4 occasions related to skin cancer.

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

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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 eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an adm inistrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability A ssistance (SDA) program which provides financial ass istance 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 Administ rative 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 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:
 - (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 which 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 und er 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 t he 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 di sabled 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 individual 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 considering whether the Clai mant is considered 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 ev idence of record supports a finding t hat Claimant has significant physical and mental limitati ons upon Claimant's abili ty 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 Appendix 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. Se e Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 13.03 was 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 t he Claimant within the past 15 y ears. The trier of fact must determine whet her the im pairment(s) presented prevent the Claimant from doing past relevant work. In the pres ent case, the Claimant's past relevant work was as a saw mill operator. Working as a s aw mill operator as testified to b e Claimant would be c onsidered medium work. Claim ant would not be able to perform his past relevant work because he is not able to do t he requisite sitting, st anding, walking, and lifting for medium work. Therefore, an eval uation to step 5 will be completed. In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claimant form doing other work. 20 CFR 416.920(f). Th is determination is based upon the Claimant's:

- 1. residual functional c apacity de fined simply as "what can you still d o 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 desp ite 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 class ify jobs as 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 t han 10 pounds at a time and occasionally lifting or carrying articles lik e docket files, ledgers, and small tools. Although a sedentary job is defined as one whic h involves sitting, a certain amount of walking and standing is often necessary in carry ing 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 wor k 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 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 weig hing 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 weig hing up to 50 pounds. If someone can do heavy work, we determine that he or she c an 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 Human Services*, 732 Fd2 962 (6th 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 Adminis trative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exerti onal and non-exertional impairm ents render claim ant unable to engage in a full range of even sedentary work activities on a regular and c ontinuing basis. 20 CFR 404, Subpart P, Appendix 11, Sect ion 201.00(h). See Social Sec urity Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986) . The dep artment has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, giv en claimant's age, education, and work experience, there are si gnificant numbers of jobs in the national economy whic h the claim ant could perform despite claim ant's limitatio ns. Acc ordingly, t his Administrative Law Judge conc ludes that claimant is dis abled for purposes of the M A

and SDA programs. Claimant's te stimony regarding his limitations and ability to sit, stand, walk, lift and carry are supported by substantial medical evidence.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that Claimant is medically disabled for the purpose of MA and SDA as of

Accordingly, the Departm ent's decision is hereby **REVERSED** and the Department is **ORDERED** to initiate a review of the MA and SDA applications dated A review of this case shall be set for March, 2014.

Aaron Administrative for Department

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McClintic Law Judge Maura Corrigan, Director of Human Services

Date Signed: 03/29/2013

Date Mailed: 03/29/2013

NOTICE: Administrative Hearings may order a rehearing or reconsider ation on either its own motion or at the request of a party within 30 days of the mailing date of this Decis ion and O rder. Administrative Hearings will not or der 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.

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 <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error r, 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.

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

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