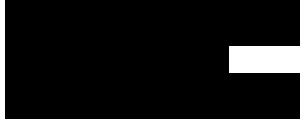


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2013-61764
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: December 4, 2013
County: Ingham

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 4, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for 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 March 22, 2013, Claimant applied for SDA.
- (2) On July 12, 2013, the Medical Review Team (MRT) denied Claimant's SDA application indicating Claimant's physical or mental impairment does not prevent employment for 90 days or more. (Depart Ex A, pp 1-2).
- (3) On July 18, 2013, the department case worker sent Claimant notice that his application was denied.
- (4) On July 21, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 22, 2013, the State Hearing Review Team (SHRT) upheld the denial of SDA benefits due to lack of duration under 20 CFR 416.909. (Depart Ex B, pp 1-2).

- (6) Claimant has a history of morbid obesity, surgically placed pins in his left foot and left shoulder surgery.
- (7) On August 23, 2011, Claimant was evaluated by an orthopedic surgeon for an injury to his left foot. His left foot was swollen and he had increased prominence on the medial aspect of his arch. He had pain with palpation of his midfoot. X-rays demonstrated a clear abnormality and malalignment at the tarsometatarsal joints of the first, second, third, fourth, and fifth with lateral deviation of all of them relative to the cuneiforms. Additionally, there was roughly a centimeter gap between the first and second metatarsal bases. Options for treatment were discussed and Claimant opted for a reduction and arthrodesis procedure. (Depart Ex. A, p 139).
- (8) On September 19, 2011, Claimant had surgery for a first, second and third tarsometatarsal dislocation. Claimant was discharged two days later after having arthrodesis, mid foot, multiple joints, open reduction internal fixation of the first, second and third tarsometatarsal joints and a harvest large bone graft from the proximal tibia. (Depart Ex. A, pp 226-229).
- (9) On March 13, 2012, Claimant saw his surgeon for follow-up of his left foot surgery. There were no rashes, abrasions, or other dermatologic findings on his left foot. There was no redness or erythema. He did have swelling about his foot. He had full sensation and motor function. He had full tibiotalar, subtalar, and metatarsal joint range of motion. X-rays showed his hardware to be in place with no interval changes in position or loosening. Claimant was instructed that he could continue activities as tolerated and reminded that his foot would never be normal. He was encouraged to continue elevating and icing. (Depart Ex. A, p 180).
- (10) On April 17, 2012, Claimant underwent a medical evaluation on behalf of the Department. Claimant is obese and has a mildly antalgic gait. He has a questionable supraumbilical ventral hernia that is easily reduced, but is noted with Valsalva. There is no rebound, negative CV A tenderness. With the exception of the left 4th digit and the left shoulder, he has normal range of motion of the neck, back, right shoulder, elbows, wrists, hands, hips, knees, ankles and feet. He can get in and out of a chair, and on and off the exam table without difficulty. He cannot heel-toe tandem. He has diffuse dorsal tenderness in the dorsomedial aspect of the left foot. He has what appears to be a significant AC separation of the left shoulder and he does have impingement. He also has a long-standing flexion contracture of the left 4th digit. Claimant was assessed status post skin graft to the left hand and forearm, 2007; history of left foot trauma, status post-surgery 9/11 with persistent pain and paresthesias; history of a bike accident, longstanding left AC separation; possible ventral hernia without any acute issues; possibility of depression/underlying personality disorder. (Depart Ex. A, pp 188-190).

- 11) On May 31, 2012, x-rays of Claimant's right ankle showed some spurring overlying the medial malleolus. There was no fracture, soft tissue swelling or acute process seen. The x-ray of Claimant's left ankle showed numerous postsurgical screws overlying the bases of the first through third metatarsals. There was no soft tissue swelling or acute process seen. (Depart Ex. A, pp 27-28).
- 12) On June 5, 2012, Claimant underwent left shoulder surgery for left shoulder coracoclavicular ligament disruption, acromioclavicular joint dislocation and arthrosis and a possible superior labrum anterior-posterior tear. A left shoulder arthroscopy with extensive debridement of the superior, posterior labrum and biceps tendon was performed. The rotator cuff was repaired arthroscopically, in addition to a Subacromial decompression with acromioplasty, open distal clavicle excision and an open anatomic coracoclavicular ligament reconstruction utilizing semitendinosus allograft. Claimant was in a sling with instructions to wear it for 6 weeks. (Depart Ex. A, p 98-100).
- 13) On July 20, 2012, x-rays of Claimant's left shoulder showed a chronic tear of the coracoclavicular ligament with grade IV AC separation, dystrophic calcification and resection of the distal clavicle. No evidence of dislocation to the humerus. (Depart Ex. A, pp).
- 14) On January 28, 2013, Claimant followed up with his shoulder surgeon. Claimant stated he was doing better, but in the last week he had had increasing pain in his scapular area. He continued to have some significant discomfort but feels better than he did prior to his surgery. He denied any other issues. His gait and stability were normal. He had full active range of motion but with pain. His strength is 4/5 with external rotation and he seems to have increasing pain with palpation about the shoulder. He was neurovascularly intact distally. There was tenderness over the body of the scapula and in the perispinal region. The surgeon explained that this was probably just a flareup as he had increased his activity level too quickly. He was instructed to reduce the activity and begin anti-inflammatories and slowly increase his activity level. (Depart Ex. A, p 108).
- 15) On April 22, 2013, Claimant was evaluated by a hand specialist. Claimant reported that in 2007 he was in a fight and jammed his left ring finger. Two days following the incident, while starting a fire his bilateral arms were accidentally burned. He was immediately transported to the emergency room for acute care and was transferred to a hospital. During his medical care, his ring finger was overlooked and not addressed. Claimant is experiencing constant pain and tightness. He has no active movement of the ring finger. Based on the chronic nature of the deformity, pain and decreased use for daily activities, proximal interphalangeal joint fusion was recommended. (Depart Ex. A, pp 34-38).

- (16) On January 31, 2013, Claimant underwent a medical evaluation by the Disability Determination Service. Claimant is morbidly obese with a history of a burn injury to the left side of the chest, left hand and arm and right hand, a crush injury to the left foot and a left shoulder dislocation. The physical examination revealed morbid obesity; poor handgrip strength on the right and very poor on the left; a mild burn scar on the pinna of the left ear; no scarring over the chest; rotund abdomen; scars over approximately one quarter of the left lower arm dorsally, over the dorsum of the hands bilaterally, and over the dorsum of the left foot; walking on heels with difficulty; expressed pain in the left shoulder and bilateral ankles consistent with left shoulder and bilateral ankle pathology; limited ranges of motion of the left shoulder; and limited range of motion of the left fourth finger with scarring which maintains the left fourth finger PIP joint at 90 degrees extension. It is noted that Claimant was able to raise his left arm to 120 degrees as observed by the nurse when Claimant insisted that he could raise his left shoulder no more than 70 degrees as observed by the physician. This inconsistency raised a question as to the true limitation of range of motion of the left shoulder. The examining physician opined that Claimant should be able to work in a seated or standing position with mild limitations in walking. Use of bilateral extremities for lifting, carrying, pushing, and pulling is mildly diminished normal. Bilateral hand grip strength is below normal on the right and very poor on the left. Claimant should be able to use his right hand for fine manipulation. There is moderate limitation in climbing stairs, ladders or scaffolding. Claimant can never work around unprotected heights or operate a motor vehicle. (Depart Ex. A, pp 48-61).
- (17) On May 31, 2013, Claimant had his first postoperative visit with the hand surgeon. Claimant reported minimal improvement. His left ring finger was swollen and the motion of his finger was limited. He stated he was in severe pain and unable to sleep at night. The sutures were removed and deep tissue manipulation to the incision/scar was redemonstrated. The surgeon spoke with Claimant about his non-compliance with the previously recommended treatment program of splinting. The surgeon advised Claimant that further non-compliance could interfere with proper healing and may necessitate additional intervention. (Depart Ex. A, pp 39-41).
- (18) Claimant is a 42 year old man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 289 pounds. Claimant has a high school equivalent education. Claimant last worked in 2007.
- (19) Claimant was awaiting a decision from his Social Security disability hearing at the time of the hearing.

CONCLUSIONS OF LAW

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 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 manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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

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:

. . . 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. [SDA = 90 day duration].

A set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine 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/she 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/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine 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; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include –

- (1) 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. 20 CFR 416.921(b).

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

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals 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 meets or medically equals 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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments,

including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her 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/her 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.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he has not worked since 2007. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with morbid obesity, surgically placed pins in his left foot and left shoulder surgery. It must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding

of not disabled must be rendered. Nevertheless, Claimant's impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3 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 Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

At Step 5, the burden of proof shifts to the department to establish that Claimant does not have residual functional capacity. 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. See discussion at Step 2 above. Findings of Fact 6-18.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least sedentary duties.

The physician conducting the independent medical evaluation opined that Claimant should be able to work in a seated or standing position with mild limitations in walking. Use of bilateral extremities for lifting, carrying, pushing, and pulling is mildly diminished normal. Bilateral hand grip strength is below normal on the right and very poor on the left. Claimant should be able to use his right hand for fine manipulation. There is moderate limitation in climbing stairs, ladders or scaffolding. Claimant can never work around unprotected heights or operate a motor vehicle.

Therefore, the Administrative Law Judge finds that Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Moreover, there is no evidence that Claimant has a severe impairment that meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows he can perform sedentary work. Under the Medical-Vocational guidelines, a younger individual age 18 - 49 (Claimant is 42 years of age), with a high school education and an unskilled work

history is not considered disabled pursuant to Medical-Vocational Rule 201.27. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

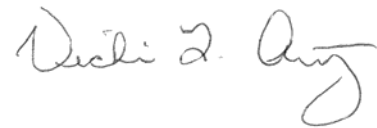
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 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 exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 Claimant's application for State Disability Assistance benefits.

Accordingly, the department's decision is **AFFIRMED**.

It is SO ORDERED.



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

Date Signed: December 19, 2013

Date Mailed: December 20, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

VLA/las

cc:

