

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

IN THE MATTER OF:



Reg. No.: 201356651
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 20, 2014
County: Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, an in-person hearing was held on February 20, 2014, from Jackson, Michigan. Participants on behalf of Claimant included [REDACTED] and his authorized hearings representative [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED]. During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

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 November 27, 2013, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On April 5, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on drug addiction or alcoholism.
3. On April 11, 2013, the Department sent the Claimant notice that it had denied the application for assistance.
4. On July 1, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On November 20, 2013, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
7. The Social Security Administration (SSA) approved the Claimant for Supplemental Security Income (SSI) benefits with an onset date of February 14, 2014.
8. On May 20, 2014, after reviewing the additional medical records, the State Hearing Review Team (SHRT) found that the evidence supports a finding of disability as of July 1, 2013.
9. The Claimant is a 42-year-old man whose birth date is [REDACTED].
10. Claimant is 6' 0" tall and weighs 185 pounds.
11. The Claimant attended high school through the 10th grade and attended college.
12. The Claimant is able to read and write and does have basic math skills.
13. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
14. The Claimant has past relevant work experience as a welder where he was required to weld, fabricate metal parts, and lift objects weighing up to 70 pounds.
15. The Claimant's disability claim is based on arthritis, back pain, vision, hearing, chronic obstructive pulmonary disease, atrial fibrillation, liver, seizures, learning disability, mood disorder, post-traumatic stress disorder, and personality disorder.

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, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. Mich Admin Code, R 400.903. 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 administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to

1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on 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 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 is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that has not been employed for the previous 5 years and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore this Administrative Law Judge finds that the Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 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 not disabled.

At step two, a determination is made 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. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a ■-year-old man that is 6' 0" tall and weighs 185 pounds. The Claimant alleges disability due to arthritis, back pain, vision, hearing, chronic obstructive pulmonary disease, atrial fibrillation, liver, seizures, learning disability, mood disorder, post-traumatic stress disorder, and personality disorder.

The objective medical evidence indicates the following:

On September 12, 2012, a treating physician found the Claimant to have serious symptoms and serious impairments in social and occupational functioning.

On November 14, 2012, a treating physician diagnosed the Claimant with a large left pleural effusion with almost complete compression of the left lung and acute hypoxemic respiration failure, alcohol abuse, and tobacco use. The left pleural effusion was found to be secondary to empyema and likely infectious in etiology.

On January 5, 2013, the Claimant was admitted for inpatient treatment following a motor vehicle accident. On January 21, 2013, the treating physicians determined that the Claimant's social and occupational functioning were seriously impaired and there was an inability to function in almost all areas. A computed tomography (CT) scan revealed a mild degree of generalized cerebral cortical and central volume loss but no parenchymal mass, brain hemorrhage, or fluid collection. The Claimant was discharged on February 1, 2013.

On July 5, 2013, a treating physician diagnosed the Claimant with chronic alcoholism with numerous complications, and found him to have serious symptoms and serious impairments in social and occupational functioning. A treating physician found the Claimant to have severe impairments to his memory, processing speed, functioning skills, visual motor integration skills, his visual memory, and verbal memory.

On January 30, 2014, a treating physician diagnosed the Claimant with neuropathy, chronic back pain, and alcoholism. On February 14, 2014, a magnetic resonance imaging (MRI) scan revealed minor circumferential disc bulges at the L4/5 and L5/S1 levels with minor facet degenerative

changes at the L3/S1 level, but no disc herniations, stenosis, or significant neural compression were observed.

On May 9, 2014, a consultative psychologist diagnosed the Claimant with major depressive disorder, generalized anxiety disorder, cannabis use disorder, caffeine related disorder, polysubstance abuse disorder and that he is a high risk for alcohol relapse and suicide.

Before January 5, 2013, the Claimant suffered from a large left pleural effusion secondary to empyema and likely infectious in etiology. The evidence does not support a finding of a severe impairment existed before January 5, 2013, that could reasonably be expected to last 12 months.

The evidence on the record indicates that the Claimant's was been diagnosed with major depressive disorder, generalized anxiety disorder, and a traumatic brain injury with an onset date of January 5, 2013, by treating physicians, which has resulted in significant impairments of his social and occupational functioning. On January 21, 2014, treating physicians found the Claimant to be not capable of functioning independently. The evidence on the record supports a finding that the combination of physical and mental impairments became a severe impairment of his ability to perform work related tasks as of January 5, 2013. Therefore, this Administrative Law Judge finds a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities as of January 5, 2013, and the Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 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.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal 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 is of a severity to meet or medically equal 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.

The Claimant's impairment failed to meet the listing for arthritis under section 14.09 Inflammatory Arthritis, because the objective medical evidence does not demonstrate an impairment involving a weight-bearing joint and resulting in an inability to ambulate effectively. The objective evidence does not support a finding that the Claimant lacks the ability to perform fine and gross movements with each upper extremity.

The Claimant's impairment failed to meet the listing for back pain under section 1.04 Disorders of the spine, because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence

does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively. A magnetic resonance imaging (MRI) scan did not reveal evidence of disc herniations, stenosis, or significant neural compression.

The evidence on the record as a whole does not support a finding that the Claimant meets a listing for impairments to his vision or hearing under section 2.00 Special Senses and Speech.

The Claimant's impairment failed to meet the listing for chronic obstructive pulmonary disease (COPD) under section 3.02 Chronic pulmonary insufficiency because the evidence on the record as a whole does not support a finding that the Claimant's forced expiratory volume in 1 second measured in liters of air at body temperature and pressure saturated (LBTSP) was measured at less than 1.65 L, or that his forced vital capacity measured in liters of air at body temperature and pressure saturated (LBTSP) was measured at less than 1.85 L. The Claimant was diagnosed with a large left pleural effusion secondary to an empyema that was likely infectious in etiology.

The evidence on the record as a whole does not support a finding that the Claimant meets a listing for atrial fibrillation under section 4.00 Cardiovascular system.

The Claimant's impairment failed to meet the listing under section 5.05 Chronic liver disease because the objective medical evidence does not demonstrate hemorrhaging that requires hospitalization for transfusion, ascites or hydrothorax, spontaneous bacterial peritonitis, or hepatorenal syndrome.

The Claimant's impairment failed to meet the listing for seizures under section 11.02 Convulsive epilepsy, or section 11.03 Non-convulsive epilepsy because the evidence on the record as a whole does not support a finding that the Claimant suffers from seizures that are a significant interference with his daily activities.

This Administrative Law Judge finds that the evidence as a whole supports a finding that the Respondent meets or equals a listing under section 12.04 Affective disorders as of January 5, 2013. A treating physician diagnosed the Claimant with chronic alcoholism and found him to have severe impairments to his memory, processing speed, functioning skills, visual motor integration skills, his visual memory, and verbal memory. On January 21, 2013, the treating physicians determined that the Claimant's social and occupational functioning were seriously impaired and there was an inability to function in almost all areas. The Claimant was found to be overwhelmed with multiple stimuli and have difficulty concentrating or thinking. The evidence on the record supports a finding that the Claimant suffers from marked restrictions of his activities of daily living and marked difficulties in maintaining concentration. Therefore, the Claimant is not disqualified from disability benefits at this step.

STEP 4

Can the client do the former work that he performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the Claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Claimant has the residual functional capacity to perform the requirements of his 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 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.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published 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).

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

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Semi-skilled work. Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary,

as when hands or feet must be moved quickly to do repetitive tasks. 20 CFR 416.968(b).

On November 14, 2012, a treating physician diagnosed the Claimant with a large left pleural effusion secondary to empyema and likely infectious in etiology. The Claimant suffers from chronic back pain and was found to have minor disc bulges at the L4/5 and L5/S1 levels but there is no evidence of disc herniations, stenosis, or neural compression. The evidence supports a finding that the Claimant has severe impairments to his functioning skills, visual motor integration skills, and processing speed. After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform sedentary work of a simple and repetitive nature as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant work experience as a welder where he was required to fabricate metal parts and lift objects weighing up to 70 pounds. The Claimant's prior work fits the description of heavy work. There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work substantially similar to work performed in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Claimant is able to do other work, he is not disabled. If the Claimant is not able to do other work and meets the duration requirement, he is disabled.

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.... 20 CFR 416.945(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 42-years-old, a younger person, under age 50, with a high school equivalent education, and a history of semi-skilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work. Before January 5, 2013, Medical Assistance (M.A.) is denied using Vocational Rule 201.21 as a guideline.

If the Claimant had the residual functional capacity to perform a full range of sedentary work, considering the Claimant's age, education, and work experience, and ability to function as of January 5, 2013, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.21.

However, considering the impairments due chronic alcoholism and severe depression in combination with physical injuries requiring hospitalization on January 5, 2013, that these additional limitations so narrow the range of work the Claimant might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled not disabled for purposes of the Medical Assistance (M.A.) benefits.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**. The Claimant meets the definition of medically disabled under the Medical Assistance Program as of January 5, 2013. The Claimant is found to not meet the definition of medically disabled before January 5, 2013.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ordered to initiate a review of the November 27, 2012, application for assistance to determine if all other non-medical eligibility criteria are met as of January 5, 2013.
2. A medical review should be scheduled for June of 2015.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits he may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 17, 2014

Date Mailed: June 17, 2014

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

KS/hj

cc:

