

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

IN THE MATTER OF:



Reg. No.: 14-002334-RECON
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: September 23, 2014
County: Oakland-District 3

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Claimant's Authorized Hearing Representative's (AHR) timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on September 23, 2014, and mailed on October 7, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on December 12, 2014.

ISSUE

Whether the ALJ erred in finding Claimant was not disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. Findings of Fact No. 1 through 8 under Registration Number 14-002334 are incorporated by reference.
2. On September 23, 2014, a hearing was held resulting in a Hearing Decision mailed on October 7, 2014, which found Claimant was not disabled.

3. On October 14, 2014, Claimant's authorized representative requested reconsideration/rehearing.
4. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant's authorized representative requested a rehearing/reconsideration asserting misapplication of policy that would impact the outcome of the original hearing decision.

Disability is defined as 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(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory 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 consider an individual's current work activity; 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 determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) 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 a determination cannot be made that an individual is disabled, or not disabled, at a 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 individual's residual functional capacity is

assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has 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 individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly 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).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant last worked in 2013, and is not involved in substantial gainful activity. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual'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 severe. 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:

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. *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 administrative 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 disability due to brain surgery, seizure disorder, hypertension, head trauma, right arm and back pain, traumatic brain injury, swelling in the optic nerves, migraines, dizziness, loss of balance, memory loss, posttraumatic stress disorder, anxiety attacks, tremors, degenerative disc disease, depression and injury to his collarbone.

On [REDACTED], Claimant was discharged from the Neuroscience Unit. The psychiatrist opined that Claimant demonstrated overall slowed processing speed, difficulty with complex attention, tasks requiring both verbal and visual attention, and working with information that requires complex attention and flexibility, especially when speed is important. The psychiatrist noted Claimant may require direct supervision, especially when he is outside the house, during meal preparation, using appliances, taking medications, or managing finances to ensure safety and accuracy. The psychiatrist noted Claimant may have trouble returning to work at this time due to physical and cognitive impairments. A follow-up neuropsychological evaluation was recommended prior to Claimant returning to work in order to assess current cognitive and emotional status.

In January, 2014, Claimant's treating physician opined that due to Claimant's traumatic brain injury, he could no longer manage his own affairs. The physician opined Claimant needed physical, speech and occupational therapy due to the traumatic brain injury.

In March, 2014, Claimant had a consultation with an ear, nose and throat specialist. Claimant was assaulted on [REDACTED]. He had a subdural hematoma removed on [REDACTED]. Claimant was also vented for 4 days. Since the hematoma was removed, Claimant has had hearing loss, hoarseness, trouble swallowing, and dizziness. On examination, Claimant was diagnosed with a benign neoplasm larynx (interarytenoid area), asymmetrical sensorineural hearing loss, subjective tinnitus and peripheral vertigo. Claimant was scheduled for a laryngoscopy with removal of the mass, VNG, and balance retraining exercises.

On [REDACTED], Claimant underwent a psychological evaluation by the disability determination service. Claimant had not been cleared to drive, so his mother brought him to the evaluation. Claimant was diagnosed with adjustment disorder with depressed mood and seizures. Prognosis was good. The psychologist opined that Claimant's memory is slightly impaired, indicating an inability to learn and retain new information, however, his concentration is intact. His fund of knowledge does not seem consistent with his stated educational achievements. At this time, his ongoing mood would not prevent him from work success; however, he continues to have seizures frequently.

On [REDACTED], the videonystagmography (VNG) testing was completed. Claimant was diagnosed with suspected slight left peripheral weakness, based on the positional nystagmus.

In May, 2014, Claimant's treating physician submitted a letter indicating Claimant suffered a traumatic head injury in November, 2013, and due to this injury, he requires care 24/7 for emotional and physical problems. He suffers from lack of sleep, anxiety, frustration he cannot control, memory loss, anger, tremors, seizures, headaches, dizziness and posttraumatic stress syndrome. The physician noted Claimant did not have an issue with seizures before his accident in November, 2013. The physician opined that an injury to the head which Claimant experienced can cause seizures.

In June, 2014, Claimant's treating physician submitted a letter indicating he has been Claimant's physician for the past 10 years. Now eight months post Claimant's traumatic brain injury, Claimant's new baseline is anxiety, frustration, impulsiveness, road rage, always fearful, burns and cuts himself, has a hard time relaxing and winding down, and has mood swings. Claimant was prescribed a service dog.

Claimant submitted a Medical Examination Report completed by his treating physician, dated [REDACTED]. Claimant is diagnosed with a traumatic brain injury, posttraumatic stress disorder, memory loss, seizures, hearing loss, frustration and uncontrolled compulsiveness. On examination, Claimant's movements were impaired and he had a lot of fatigue. His pain level was uncontrolled. Claimant uses a cane due to the weakness on his left side. He is unable to use a knife because of tremors and cooking is hazardous. Since the brain injury occurred, Claimant experiences motor sensory, seizures, speech, reflexes, ataxia, coordination, tremors, nerve pain, and lack of understanding. His mood is unstable. He has slowed comprehension. He cannot follow directions and he has poor memory. The physician indicated Claimant has limitations with comprehension, sustained concentration, memory, following simple instructions, reading, writing, and social interaction. The physician opined that Claimant's condition is deteriorating and he is unable to meet his needs in the home.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Claimant has presented medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. 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 continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the ALJ erred in finding otherwise.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of brain surgery, seizure disorder, hypertension, head trauma, right arm and back pain, traumatic brain injury, swelling in the optic nerves, migraines, dizziness, loss of balance, memory loss, posttraumatic stress disorder, anxiety attacks, tremors, degenerative disc disease, depression and injury to his collarbone.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 4.00 (cardiovascular system), Listing 11.00 (neurological) and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled at Step 3. Accordingly, the Claimant's eligibility 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 functional capacity ("RFC") and past relevant employment. 20 CFR 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 learn the position. 20 CFR 416.960(b)(1). Vocational factors 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 assessed 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.

This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant's past work history is that of a furniture mover and as such, Claimant would be unable to perform the duties associated with his past work, based on the use of a cane and recurrent seizures. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational 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 Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational 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).

Claimant is 30 years old, with a high school education. Claimant's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

Moreover, Claimant's treating physician's opinion is that Claimant's condition is deteriorating. Claimant's physical and mental restrictions are well supported by medically acceptable clinical and laboratory diagnostic techniques, so the treating physician's opinion has controlling weight. 20 CFR 404.1527(d)(2).

The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

As a result, the ALJ's determination which found Claimant not disabled at Step 2 (non-severe impairment), Step 3 (listing of impairments), Step 4 (substantial gainful activity) and Step 5 (residual functional capacity) are VACATED and the Department's determination which found Claimant is not disabled is REVERSED.

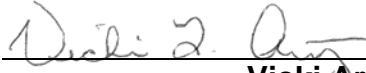
DECISION AND ORDER

Based on the above findings of fact and conclusions of law, it is determined that Administrative Law Judge erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on October 7, 2014, under registration Number 14-002334 which found Claimant not disabled is VACATED.
2. The Department's determination which found Claimant not disabled is **REVERSED**.
3. The Department shall initiate processing of the January 2, 2014, MA/Retro-MA and SDA application to include any applicable requested retroactive months, to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.

5. The Department shall review Claimant's continued eligibility in January, 2016, in accordance with Department policy.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/15/2015**

Date Mailed: **1/15/2015**

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NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

