

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-018078
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: January 29, 2015
County: Huron

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 January 29, 2015, 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 properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

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

- (1) On August 5, 2014, Claimant applied for SDA.
- (2) On November 26, 2014, the Medical Review Team (MRT) denied Claimant's SDA for lack of duration.
- (3) On December 3, 2014, the Department sent Claimant notice that his application was denied.
- (4) On December 12, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
- (5) Claimant has a history of back surgery (spinal fusion in 2009), chronic pain, hyperlipidemia, uncontrolled hypertension, osteoarthritis, bipolar disorder, posttraumatic stress disorder, anxiety, and depression.
- (6) Claimant is a 49 year old man whose birthday is [REDACTED].
- (7) Claimant is 5'11" tall and weighs 207 lbs.

- (8) Claimant has a ninth grade education.
- (9) Claimant last worked in 2012.
- (10) Claimant was appealing the denial of Social Security disability benefits at the time of this hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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 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 2012. 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 back surgery (spinal fusion in 2009), chronic pain, hyperlipidemia, hypertension, arthritis, bipolar disorder, posttraumatic stress disorder and severe depression. 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.

On [REDACTED], [REDACTED] completed a Physical Residual Functional Capacity Questionnaire at the Department's request. [REDACTED] noted he began treating Claimant in January, 2012. He is diagnosed with chronic low back pain and a history of lumbar surgery. [REDACTED] indicated that anxiety affects Claimant's physical conditions. [REDACTED] opined Claimant's symptoms would not be severe enough to interfere with attention and concentration needed to perform even simple tasks in a typical workday, although he would be incapable of performing even low stress jobs. Claimant can walk less than one block, sit for 30 minutes, stand for 30 minutes, and sit, stand and walk less than 2 hours in an 8-hour working day. The physician indicated that during an 8-hour workday, Claimant would need periods of walking for 10 minutes, approximately every 45 minutes. He would need a job that permits shifting positions at will from sitting, standing or walking. He would also need to take unscheduled breaks. Claimant does not need an assistive device or to elevate his legs. He can frequently lift and carry 10 pounds and occasionally 20 pounds in a competitive work situation. He can occasionally look down, turn his head right or left, look up and hold his head in a steady position. He can rarely twist, stoop, bend, crouch, squat, climb ladders or climb stairs. He can use his hands 50% of the time to grasp, turn and twist objects. He can use his fingers 50% of the time for fine manipulation. He can use his arms to reach overhead only 10% of the time. The physician opined that Claimant would be absent from work more than four days a month as a result of his impairments or treatments.

Claimant underwent an electrocardiographic component of exercise myocardial perfusion imaging study on [REDACTED]. The test was terminated after 11 minutes secondary to fatigue. Impression: Abnormal electrocardiographic component with

evidence of dynamic changes with reversal of T wave axis and development of ST segment depressions with biphasic T waves in leads V2 and V3. These findings may be consistent with ischemia. No symptoms of chest pain were reported. Excellent functional capacity. No malignant tachy or bradyarrhythmias were noted. There were rare isolated PVCs without any symptoms.

On [REDACTED], X-rays of Claimant's left knee showed slight arthritic narrowing identified within the medial compartment. No significant interval change when compared to X-rays of [REDACTED].

Claimant returned to [REDACTED] for medication refills. A MAPS report was obtained. According to the narcotic MAP, Claimant gets narcotics from different resources. The physician indicated he had discussed this issue with Claimant and informed him that he would no longer be able to fill his narcotics at this clinic other than this time, and a discharge letter would be mailed to him.

On [REDACTED], Claimant underwent an independent internal medicine evaluation. The physician diagnosed Claimant with chronic recurrent low back pain, lumbago, status post lumbar surgery and recurrent knee pain. The physician noted Claimant was well developed, well nourished, and in no distress. The musculoskeletal examination revealed no edema and some tenderness in the lumbar area. Claimant was alert, oriented to person, place and time. He had a normal mood and affect. His behavior was normal. The physician recommended physical therapy for a complete functional capacity evaluation.

On [REDACTED], Claimant underwent a psychological evaluation on behalf of the Department. The psychologist noted Claimant was cooperative and attentive. Results of the mental status examination revealed abnormalities in concentration, general knowledge, memory, judgment, abstract reasoning, and calculation tasks. The psychologist opined that at this time, Claimant meets diagnostic criteria for Persistent Depressive Disorder, moderate. The psychologist indicated Claimant's ability to relate and interact with others, including coworkers and supervisors, is not impaired. His depression could affect his interpersonal relationships in the workplace. His ability to understand, recall and complete tasks and expectations does not appear to be significantly impaired. He is able to perform simple [tasks] with no major limitations. He struggles with tasks that have multiple steps and increased complexity as these can overwhelm him. His ability to maintain concentration does seem somewhat impaired. As a result of his emotional state he may often be distracted and his effectiveness and performance will likely be limited and slowed. His ability to withstand the normal stressors associated with a workplace setting is somewhat impaired.

On [REDACTED], Claimant followed up with his pain management physician. At Claimant's last visit, the physician has adjusted the MS Contin up to 60 mg every 12 hours and his Cymbalta from 30 mg to 60 mg every day. Since making these adjustments, Claimant reports that his pain level was now an acceptable level. Claimant also told his pain management physician that he was not having any adverse side effects. The physician noted Claimant's affect seems to be a lot brighter. He does not look anxious like he did before. He is sleeping good. There are no constipation issues. The physician indicated that Claimant thanked him and shook his

hand multiple times during the follow-up visit, thanking the physician for getting his life back in order.

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 records 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).

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. 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 car hauler and as such, Claimant would be unable to perform the duties associated with his past work. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

The medical information indicates that Claimant suffers from back surgery (spinal fusion in 2009), chronic pain, hyperlipidemia, uncontrolled hypertension, osteoarthritis, bipolar disorder, posttraumatic stress disorder, anxiety, and depression.

Claimant testified that he can walk one block, stand for 15 minutes, sit for an hour with shifting and carry 10-20 pounds using both hands. Claimant stated he doctor has told him that he is done driving a truck. Claimant reported that he can drive, just not for very long. He can also cook his own meals, do his own grocery shopping although the walking bothers him and housekeeping is hard on him. He reported that he tries not to extend himself during the day because he cannot take too many pills or he will run out.

Based on the psychological evaluation and the pain management physician's records, 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 his 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.

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 light work. Under the Medical-Vocational guidelines, a younger individual age 18 - 49 (Claimant is 49 years of age), with a ninth grade education and an unskilled work history is not considered disabled pursuant to Medical-Vocational Rule 202.17. 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.

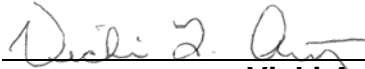
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claimant was not eligible to receive State Disability Assistance.

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

Date Signed: **2/20/2015**

Date Mailed: **2/20/2015**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

