

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

IN THE MATTER OF:

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Reg. No.: 15-011510
Issue No.: 4009
Case No.: ██████████
Hearing Date: August 10, 2015
County: Barry

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 August 10, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Eligibility Specialist.

ISSUE

Did the Department properly determine 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 May 1, 2105, Claimant submitted an application for public assistance seeking SDA benefits (Exhibit A, pp. 3-37).
2. On June 24, 2015, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 38-41).
3. On June 24, 2015, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 364-367).
4. On July 8, 2015, the Department received Claimant's timely written request for hearing (Exhibit A, p. 2).
5. Claimant alleged disabling impairment due to right and left shoulder pain and degenerative disc disease (DDD).

6. On the date of the hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Claimant graduated from high school.
8. Claimant has an employment history of work as construction worker/laborer and cement mixer driver.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

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

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in substantial gainful activity (SGA);
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

In the present case, Claimant alleges disabling impairment due to right and left shoulder pain and DDD. At the hearing, Claimant pointed out that several documents in the hearing packet, specifically pages 257 through 356, did not pertain to him. Those pages were removed from Exhibit A and Exhibit A was admitted into evidence absent pages 257 to 356. The medical evidence admitted into evidence was reviewed and is summarized below.

Claimant had surgery to repair a torn left rotator cuff in September 2012. Surgery was followed by physical therapy from October 2012 to February 2013 (Exhibit A, pp. 79-131, 183-186).

A January 8, 2013, MRI of Claimant's left shoulder after his rotator cuff repair surgery was negative for a re-tear of the rotator cuff and showed (i) low-grade partial thickness tearing/fraying of its distal anterior articular surface fibers, (ii) mild tendinosis of the long head of biceps tendon, and (iii) mild range subscapularis tendinosis (Exhibit A, pp. 56-67).

Notes from Claimant's office visits to his doctor on February 21, 2013, showed that Claimant continued to complain of shoulder pain. The doctor concluded that Claimant had re-torn his rotator cuff, or there was at least a PASTA (partial articular supraspinatus tendon avulsion) lesion with erosion of the rotator cuff, supraspinatus and infraspinatus due to the posturing and mass effect of the A/C (acromioclavicular joint) and recommended a subacromial decompression, Mumford procedure and probable re-repair of the rotator cuff or imbrication (Exhibit A, p. 62). Claimant underwent his second left shoulder surgery on March 18, 2013, which included defragmentation and debridement and clean up (Exhibit A, p. 248). The doctor noted that surgery was complicated by Claimant's obesity (Exhibit A, p. 63).

Claimant participated in physical therapy from March 2013 to September 2013 (Exhibit A, pp. 187-256). At discharge, it was noted that progress was limited by Claimant's continuing subjective pain complaints and noted that his objective measurements did not correlate with his functional level of activities (Exhibit A, p. 187).

The notes from doctor visits indicate that Claimant continued to complain of ongoing pain and restricted movement following surgery despite physical therapy (Exhibit A, pp. 64-67). On October 4, 2013, arthroscopy was performed to remove heterotopic bone

under the acromion or clavicle and damage to the supraspinatus insertion when the PASTA lesion was repaired and anchored (Exhibit A, pp. 68-69). Claimant continued to complain of pain, despite normal post-operative x-rays of the shoulder. The doctor found that, although Claimant did not like to elevate his arm more than 60 degrees of forward flexion or 40 degrees of lateral abduction, the doctor could lift his arm up to 160 degrees although Claimant complained of pain. The doctor found that Claimant's pain was out of proportion to the clinical findings and x-ray findings and suggested an MRI and EMG to determine if the cause of his pain (Exhibit A, pp. 70-74).

Claimant participated in physical therapy from November 2013 to February 2014, with ongoing pain complaints (Exhibit A, pp. 142-182).

At the October 7, 2014, office visit, Claimant complained of pain in both shoulders. The doctor noted that, while Claimant did not like to elevate his arms above 120 degrees of forward flexion, worse on the left than on the right, both arms were easily passively moved to 180 degrees of forward flexion. The doctor also noted that Claimant's supraspinatus, infraspinatus, and subscapularis strength were all 5 out of 5 but Claimant complained of supraspinatus testing causing pain, more on the left than on the right. The doctor concluded that Claimant was using the wrong muscles to lift with. Another MRI and EMG was ordered (Exhibit A, p. 76).

At the April 28, 2015, office visit, the doctor noted that Claimant continued to complain of pain with forward flexion and lateral abduction although strength was 5 out of 5. He found significant muscle spasms along the levator scapulae and upper trapezial fibers on the left side associated with postural imbalance. The doctor concluded that he could not find "any medically objective structural problem in the shoulder other than the fact that he has to hold his shoulder in place for comfort reasons." The doctor noted that Claimant had still not gotten the requested EMG and MRI (Exhibit A, p. 77).

On April 28, 2015, Claimant's doctor completed a restriction/disability certification indicating that Claimant was being treated concerning his left shoulder but could return to work provided the job did not entail pushing, pulling or lifting greater than 5 pounds; overhead activity (above shoulder level); power, impact, vibrating or torquing tools. The doctor included a notation that the restriction was subject to pending EMG and MRI results (Exhibit A, p. 357).

On July 20, 2015, Claimant had an additional shoulder procedure. On July 28, 2015, his doctor completed a restriction/disability certificate indicating that Claimant could return to work on July 28, 2015, provided the job did not entail pushing, pulling or lifting greater than 2 pounds; overhead activity (above shoulder level); power, impact, vibrating or torquing tools. This restriction continued until September 15, 2015 (Exhibit 1).

In consideration of the *de minimus* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a

continuous period of not less than 90 days. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual'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 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The medical evidence presented does not show that Claimant's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Listings 1.02 (major dysfunction of a joint) and 1.04 (disorders of the spine) were considered. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength

demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

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, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case, Claimant alleges exertional limitations due to his medical condition. He testified that he has constant sharp pain in both shoulders and pain in his lower back that radiated down his legs and to his feet. He testified that he had balance issues, could walk two blocks on a good day but most days he could barely get out of bed, sit only 30 to 40 minutes and stand only 30 minutes before his back hurt, lift no more than 2 pounds with his left hand and 6 pounds with his right, and had difficulties gripping and grasping with both hands. He testified that he lived alone and was able to slowly bath and dress himself. He did his household chores but limited the amount he could do because of pain. He could only drive short distances because the pain in his shoulders was aggravated when he put his hands on the steering wheel. The Department worker at the hearing observed that Claimant appeared uncomfortable when he walked or moved in his chair.

Claimant's medical record does not include any medical evidence concerning back pain other than a note from his doctor referring him to another doctor for back issues (Exhibit A, p. 77). The medical evidence shows that Claimant had several procedures to his left shoulder, including repair of a torn rotator cuff, and then, beginning in October 2014, he complained to his doctor of pain in his right shoulder as well. There is also evidence that Claimant participated in physical therapy to address his shoulder pain from October 2012 to February 2013, March 2013 to September 2013, and November 2013 to February 2014. He was referred back to physical therapy in July 2015 after another procedure. The records show that Claimant had ongoing complaints of pain.

Although Claimant complained at an April 28, 2015, office visit of pain upon elevating his arms above 120 degrees of forward flexion, worse on the left than on the right, the doctor was able to easily passively move both arms to 180 degrees of forward flexion. The doctor noted that he could not find "any medically objective structural problem in the shoulder other than the fact that he has to hold his shoulder in place for comfort reasons." The record did not include any MRI or EMG results that the doctor had referred Claimant to obtain. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptoms. Social Security Ruling 96-7p.

While the doctor did indicate on April 28, 2015, that Claimant was restricted from pushing, pulling or lifting any weight greater than 5 pounds, reaching overhead, or using power, impact, vibrating or torquing tools, he also indicated that the limitation was protective pending results of the EMG and MRI. At the hearing, Claimant had yet to undergo the MRI or EMG initially requested in October 2014. Following another procedure on July 20, 2015, Claimant was limited from pushing, pulling or lifting greater than 2 pounds, reaching overhead, or using power, impact, vibrating or torquing tools but only until September 15, 2015, which is less than 90 days from the date of the procedure. Claimant testified at the hearing that he could lift up to six pounds with his

right arm. He also testified that he was capable of dressing and bathing himself and did household chores, albeit slowly.

Based on the evidence presented, including Claimant's testimony and the medical documentation, it is found that Claimant maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

As determined in the RFC analysis above, Claimant is limited to sedentary work activities. Claimant's work history in the 15 years prior to the application consists of work as a construction worker/laborer (heavy work, unskilled) and cement mixer driver (medium work, unskilled). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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).

In this case, Claimant was ■ years old at the time of application and ■ years old at the time of hearing, and, thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. He is a high school graduate with a history of unskilled work experience. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. In this case, the Medical-Vocational Guidelines, 201.27, result in a finding that Claimant is not disabled based on his exertional limitations.

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 **not disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/14/2015**

Date Mailed: **8/14/2015**

ACE / tlf

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:

[REDACTED]