

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-35980
Case No: [REDACTED]
Issue: 2009/4031
Hearing Date
November 29, 2011
Branch County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, an in-person hearing was held on November 29, 2011. Claimant and Claimant's wife and daughter, personally appeared and testified.

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. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On January 11, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On March 22, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On May 10, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P, Retro-MA and SDA indicating that Claimant physical was capable of his past relevant work.

- (3) On May 16, 2011, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On May 24, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 29, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P, Retro-MA and SDA benefits indicating Claimant retains the capacity to perform past relevant work. (Department Exhibit B, pages 1-2).
- (6) On January 11, 2012, after review of additional medical records submitted after the hearing, the SHRT upheld the denial of MA-P, Retro-MA and SDA benefits, indicating Claimant retains the capacity to perform light work. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of Crohn's disease and depression.
- (8) On February 23, 2010, Claimant had laparotomy and ileocolic resection surgery. He had been diagnosed with recurrence of Crohn's disease as ileocolic anastomosis. He had been on a medical and dietary treatment that had not been going well. He had been admitted to the Community Health Center of Branch County on 1/12/10 reporting exacerbation of pain for one month and weight loss of about 20 pounds over five months before admission. He was hospitalized and given a high dose of steroid therapy, released 1/17/10, taking Asacol. At follow-up on 1/29/10, he was not feeling well. On 2/2/10, an upper GI endoscopy was performed and appeared grossly normal. The colonoscopy with biopsy of an abnormal appearing ileocecal anastomosis was also performed. Pathologist found "slight chronic ileitis" suggestive of Crohn's disease. He was continued on Asacol, but at follow-up on 2/19/10, he was not doing well. He appeared drawn and almost cachectic. An examination of his abdomen found a subtle fullness in the right lower abdominal quadrant which was not noted in the left lower abdominal quadrant. Claimant was discharged on 3/1/10 with a final diagnoses of (1) recurrent Crohn ileitis with marked narrowing of ileum. Operation of 2/23/10, ileocolic resection with end-to-end anastomosis of ileum to ascending colon. (2) Protein calorie malnutrition secondary to Crohn's disease, and (3) B12 deficiency secondary to Crohn's disease. He was also given a 30-pound lifting limit. (Department Exhibit A, pp 51-63).
- (9) On April 15, 2010, a double contrast upper GI series and small bowel follow-through was performed. Impression of interval ileocolic resection with widely patent anastomosis. The Crohn's stricture demonstrated previously was not present. There were no areas of stricturing or significant abnormality other than some stable mild nodularity at the

duodenum. An ultrasound of the abdomen was negative. During the hepatobiliary imaging with kinevac, there was normal visualization of the gallbladder and normal ejection fraction. (Department Exhibit A, pp 42-50).

- (10) On May 27, 2010, Claimant saw his gastroenterologist. The gastroenterologist opined that Claimant has a very aggressive course of Crohn's disease for which he has required two surgeries. In the future, he carries a very high risk of disease and multiple complications. Based on his history, the gastroenterologist did not think Claimant could afford any more surgeries. Claimant was scheduled for a colonoscopy to ensure that he did not have any active disease at that point. If that was the case, he would be given some steroids for the short-term. The gastroenterologist started him on Remicade infusions to prevent further problems in the future. (Department Exhibit A, pp 28-29).
- (11) On June 3, 2010, Claimant's colonoscopy revealed the terminal ileum contained multiple patchy aphthae with non-bleeding. This was biopsied with a cold forceps for histology. There was evidence of a prior end-to-end ileo-colonic anastomosis in the ascending colon. This was patent. The exam was otherwise without abnormality. The pathology report showed a biopsy of enteric mucosa with villous architecture. The tissue fragments were focally inflamed and ulcerated, with production of fibrinopurulent exudate and inflamed granulation tissue. There was no granulomatous inflammation, dysplasia, or neoplasm. (Department Exhibit A, pp 27, 34-36).
- (12) On June 14, 2010, Claimant's gastroenterologist completed an application for long term disability income benefits on behalf of Claimant. The gastroenterologist indicated he first saw Claimant in 2004. Claimant was initially diagnosed with Crohn's disease in 2001. As of 6/3/10, the colonoscopy results showed active Crohn's disease, with Claimant having Crohn's flare since December 2009. Claimant had his first ilial resection on 1/18/10 and was hospitalized until 1/22/10, and his second ilial resection on 2/23/10, where he was hospitalized until 3/1/10. On 6/14/10, Claimant underwent a Remicade Infusion. His physician noted Claimant's condition is lifelong and he will require Remicade infusions every 6-8 weeks indefinitely and medication for the rest of his life. He will also need intermittent hospitalizations for Crohn's flares. (Department Exhibit A, pp 24-25, 30-32).
- (13) On June 19, 2010, Claimant saw his primary physician who noted that he did not believe Claimant could return to work. Claimant had been tried on Levsin which was not much help. He was able to take fluid, but felt like he had the flu with no desire to eat and was basically just drinking Ensure

since 6/17/10. His physician noted the Norco had not been much help either. (Department Exhibit A, pp 20-21).

- (14) On March 14, 2011, Claimant underwent a psychological evaluation on behalf of the department. Claimant was generally cooperative throughout the evaluation, but presented with a depressed mood and congruent affect. His current symptoms appeared mild while treated with his current medication regimen, but there did appear to be history of more severe symptoms. He did not appear to be completing many independent living tasks outside of his home (such as grocery shopping), reporting that he has little control over his bowels. Axis I: Major Depressive Disorder, Recurrent; Axis V: GAF=65. (Department Exhibit A, pp 66-75).
- (15) On April 2, 2011, Claimant was evaluated for Crohn's disease and depression on behalf of the department. Claimant has had Crohn's disease since age 19. He has had flare-ups more recently. He had two bowel resections previously. He stated he has had a constant flare-up since May which has been almost a full year. He stated he was unable to work at this time because he cannot control his bowel movements. He stated he does lose bowel function about 3 times per week. The abdomen was soft and mildly tender and bowel sounds were hyperactive. (Department Exhibit A, pp 76-78).
- (16) On October 29, 2011, Claimant arrived at the emergency room with severe abdominal pain and cramping in the right lower quadrant and left lower quadrant in the lower abdomen. He appeared to be in pain and anxious. Claimant was diagnosed with chronic lower abdominal pain (possible Crohn's Flare) and Crohn's disease. An IV was started, with Dilaudid, Zofran and Toradol. A supine view of the abdomen was obtained and showed no evidence of acute intra-abdominal pathology. He was reassessed after the fluids were administered and his pain had decreased and he was stable. He was prescribed Norco, Penicillin, and Prednisone on discharge. (Claimant Exhibit A, pp 1-11).
- (17) On December 11, 2011, Claimant was diagnosed with a Crohn's Disease Flare-up and admitted to the hospital. He appeared to be in pain, his skin was warm and diaphoretic. He was unable to lie still for assessment of abdomen at time of admission, due to pain. An IV was started with Dilaudid, Zofran and Toradol. Cat scan of the abdomen and pelvis revealed a pulmonary nodule at the right lower lobe. His condition improved and he was stable. Claimant was prescribed Prednisone, Percocet and Pepcid and discharged. (Department Exhibit A, pp 81-97).
- (18) Claimant is a 47 year old man whose birthday is [REDACTED]. Claimant is 6'4" tall and weighs 176 lbs. Claimant completed high school.

- (19) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Under the Medicaid (MA) program:

"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.

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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a).

Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(a).

Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. 20 CFR 416.929(c)(3).

Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician

or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account in reaching a conclusion as to whether you are disabled. 20 CFR 416.929(c)(3).

We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. 20 CFR 416.929(c)(3).

Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In Claimant's case, the ongoing abdominal pain, diarrhea, uncontrollable bowel movements and other non-exertional symptoms he describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his testimony in this regard.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
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. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. 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, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Claimant has not been employed since January 2010; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant physical limitations upon his ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, 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 the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents Claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings that Claimant cannot return to his past relevant work because the rigors of standing 8 hours a day working the floor as a department store manager are completely outside the scope of his physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;

- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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 the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities 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). 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 a significant numbers of jobs in the national economy which Claimant could perform despite his limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his May 19, 2011 MA/Retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's May 19, 2011 MA/Retro-MA and SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in February 2014, unless his Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

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

Date Signed: 2/7/12

Date Mailed: 2/7/12

VLA/ds

