

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

IN THE MATTER OF:



Reg. No: 2011-39556

Case No: [REDACTED]

Issue: 2009/4031

Hearing Date:

October 11, 2011

Monroe 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 received on June 15, 2011. After due notice, a telephone hearing was held on October 11, 2011. Claimant personally appeared and testified.

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 February 11, 2011, Claimant applied for MA-P, Retro-MA and SDA.
- (2) On April 27, 2011, the Medical Review Team (MRT) denied Claimant's MA application stating Claimant is capable of performing past relevant work, pursuant to 20 CFR 416.920(e). (Department Exhibit A, pages 3-4).
- (3) On May 6, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On June 15, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 20, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P, Retro-MA and SDA benefits stating Claimant retains the ability to perform past work. (Department Exhibit B, page 1).
- (6) On October 11, 2011, Claimant requested the record remain open in order to submit additional medical documentation.
- (7) On October 19, 2011, Claimant's additional medical documentation was received and forwarded to SHRT.
- (8) On November 30, 2011, SHRT denied Claimant's MA application stating Claimant is capable of performing any work that does not require good hearing. SHRT also denied Claimant's SDA application because the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days. (Department Exhibit C, pages 1-2).
- (9) Claimant has a history of hearing and vision impairments, bronchial asthma, and cataracts.
- (10) On May 25, 2010, Claimant's hearing test results in the right ear were PTA 75, SRT 82, LDL 115 and MCL 90. Claimant's left ear was 70, 80 110 and 88. (Department Exhibit A, page 7).
- (11) On November 2, 2010, Claimant was seen by the emergency department and then admitted to Mercy Memorial Hospital with nausea, vomiting, diarrhea and abdominal pain, most likely secondary to enterocolitis with mild ileus. The labs and urinalysis were unremarkable. The abdominal sonogram showed findings suspicious for nonspecific diffuse hepatocellular disease, adenomyomatosis and multiple tiny gallbladder polyps. There were no gallstones. CT scan of the abdomen and pelvis was suggestive of prostatic calcification and slight thickening of the gallbladder wall. Multiple liver cysts were also present and he had two right renal cysts and mild ileus. He was diagnosed with acute gastroenteritis and discharged on November 4, 2010. (Department Exhibit A, pages 8-27).
- (12) On January 18, 2011, Claimant was evaluated at Metropolitan Speech and Hearing Center where he was diagnosed with marked to profound sensorium loss, bilaterally. (Department Exhibit A, page 6).
- (13) On January 23, 2011, Claimant went to the emergency room with an asthma attack and was diagnosed with acute bronchitis and asthma exacerbation. Claimant was given an Albuterol inhaler and prescribed Amoxicillin and Rondeck and discharged.

- (14) On January 25, 2011, Claimant went to the emergency room complaining of abdominal pain. An ultrasound showed small gallbladder polyps versus adenomyomatosis in the gallbladder. A CT of the abdomen and pelvis showed multiple liver cysts unchanged when compared to 11/2/2010. Spleen, pancreas and gallbladder were all normal. Small cysts in the right kidney are stable.
- (15) On March 10, 2011, an internal medicine examination was performed on behalf of the department. The doctor noted Claimant had decreased vision and hearing. His vision is worsening. He had cataract surgery in 2008. He has decreased vision at night. He was diagnosed as hearing, vision and speech impaired. The doctor noted he needs further evaluation as he still has a decrease in his hearing, despite the hearing aids. During the neuro examination, the doctor noted Claimant had poor coordination and rapid alternative movements that were abnormal. The doctor opined that Claimant's condition was deteriorating. (Department Exhibit A, pages 30-32).
- (16) On June 3, 2011, an eye-examination was performed on Claimant at the department's request. The doctor diagnosed Claimant with pseudophakia, noting he was stable and had no limitations. (Department Exhibit A, pages 33-34).
- (17) Claimant is a 36 year old man whose birthday is [REDACTED]. Claimant is 6'0" tall and weighs 165 lbs. Claimant completed high school and has held various jobs in factories. Claimant last worked in October 2010.
- (18) Claimant was appealing his Social Security Disability denial 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).

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 deterioration of his hearing and sight, abnormal neurological examination 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 October 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 Claimant's 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 working in a metal plant 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 you 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 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 significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his February 11, 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 February 11, 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 December 2013, 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: 12/9/11

Date Mailed: 12/9/11

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

VLA/ds

■ [REDACTED]