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

IN THE MATTER OF:

[redacted]

Reg. No: 2011-43032
Issue No: 2009/4031
Case No: [redacted]
Hearing Date:
October 26, 2011
Arenac 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, a telephone hearing was held on October 26, 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 May 2, 2011, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.

(2) On June 28, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P, Retro-MA and SDA stating that Claimant's physical impairment will not prevent employment for 90 days or more. MRT denied Claimant's MA application stating Claimant is capable of performing other work, pursuant to 20 CFR 416.920(f).

(3) On June 30, 2011, the department caseworker sent Claimant notice that his application was denied.

(4) On July 8, 2011, Claimant's representative filed a request for a hearing to contest the department's negative action.

(5) Claimant has a history of lower back and neck problems, irritable bowel syndrome, carpal tunnel, gastroesophageal reflux disease, depression and anxiety.

(6) On October 12, 2006, Claimant had a comprehensive psychiatric assessment. Claimant reports that in the last few months he has been feeling increasingly depressed, both hopeless and helpless. He is having difficulties staying asleep. His appetite is poor, and he believes that he has lost some weight. His energy has decreased. His motivation is marginal. He started having suicidal thoughts and actually attempted suicide in September 2006, by overdosing on over the counter sleeping pills. He was seen in the Emergency Room and medically stabilized. Diagnosis: Axis I: Major depression recurrent moderate, social phobia, alcohol and marijuana abuse; Axis III: Carpal tunnel, GERD: Axis V: Current GAF 45 to 50. Preliminary treatment plan: needs to be involved in intensive counseling with the focus on cognitive behavioral therapy for depression and anxiety. (Department Exhibits 17-19, 47).

(7) On April 13, 2009, Claimant was seen at [redacted] for stomach cramps, GERD and herniated discs. Prescribed Prilosec and Zantac and instructed to follow up with pain clinic. (Department Exhibit 69).

(8) On May 5, 2010, Claimant went to the [redacted] for a pulled muscle in his neck. Claimant reported a long history of back pain. Prescribed Motrin, Prilosec and ice. (Department Exhibit 76).

(9) On July 15, 2010, Claimant went to the [redacted] for abdominal pain, acid reflux, and IBS. Prilosec made it worse. (Department Exhibit 75).

(10) On August 23, 2010, Claimant went to the [redacted] for follow up of his MRI results from the emergency room. Claimant was visibly uncomfortable when sitting too long. MRI reviewed and discussed. Diagnosis: Chronic pain, degenerative disc disease and disc herniation. Neurosurgery referral. (Department Exhibit 74).

(11) On September 17, 2010, Claimant's neurologist evaluated Claimant. Claimant has had problems with significant pain in his neck, shoulder, and arms, headache pain, low back and leg pain. He said his symptoms have been going on for about 4 years. Claimant has tried a multitude of epidural injections at the [redacted] and also has had 3 different rounds of physical therapies, none of which have really provided him any significant relief. As part of an evaluation for his problems relative to his symptoms, he has had complete MRI of cervical, thoracic, and lumbar spines. A review of the MRI shows clearly that Claimant does have a fair

bit of compressive effect from the spondylitic change and cervical disc displacement at the 5-6 and 6-7 levels of the cervical spine. In addition, he does have spondylolisthesis of the lumbar spine and other areas of degenerative discs in his thoracic area without compression. On examination, Claimant seemed uncomfortable. He had decreased range of motion of his cervical spine and associated spasm. He had a decreased grip on his right, sensory changes in the C6 distribution and absent biceps reflex. Reflexes are absent in the lower extremities. He has increasing pain with flexion and extension of his lumbar spine. He does have chronic pain from his cervical pathology at 5-6 and 6-7 levels of the cervical spine and intractable cervical radiculopathy and spondylolisthesis at L5-S1 with intractable low back pain. The neurosurgeon found that Claimant would benefit from anterior cervical interbody fusion. (Department Exhibits 52-53).

(12) On October 2, 2010, Claimant's pre-op chest x-ray showed no evidence of pneumothroax or pleural effusion seen. No focal consolidation or infiltrate seen. Heart size is normal. (Department Exhibit 64).

(13) On October 7, 2010, Claimant's cervical x-rays showed an intraoperative view demonstrating the anterior surgical marker at the C5-C6 level. Impression: Intractable neck, shoulder and arm pain with active cervical radiculopathy and cervical disc disease with foraminal stenosis and herniation, with problems at both the C5-C6 and C6-C7 levels of the cervical spine. Plan: Admit him for an anterior cervical decompression and cervical fusion. Claimant was admitted for a cervical disc displacement. Operation: Anterior cervical corpectomy at C6, removal of the C5-C6 and C6-C7 discs, placement of a [redacted] strut graft from C5 to C7 with autograft fusion bone and a plate from C5 to C7. He was discharged with a cervical disc displacement status post anterior cervical corticectomy at C6 with removal of C5-C6 disc, strut graft and plating at C5 through C7. On discharge, soft collar was in place and he was instructed to wear it at all times, even during sleep. He was instructed not to lift anything heavier than 5-10 pounds. (Department Exhibits 56-63).

(14) On October 29, 2010, Claimant's neurologist noted that Claimant has had an anterior cervical fusion and for the most part, he seems to be making slow progress. X-rays are stable and he is doing well. (Department Exhibit 51).

(15) On November 5, 2010, Claimant was seen at [redacted]. Claimant had been at the Standish Hospital after taking an overdose of sleeping pills. The hospital released him to his girlfriend and called her to get him in on an emergency basis. He has been going to individual therapy and medication reviews for the past four years. Claimant states he was very depressed and took an overdose of sleeping pills four years ago, but he

has been less depressed since being in treatment and having no thoughts of suicide. Claimant continues having problems with loss of energy, agitation and inability to concentrate. Affect, tone/mood depressed. His is depressed with a flat affect. Immediate and recent memory and remote memory partially impaired. Diagnosis: Axis I: Major depressive disorder, recurrent moderate; Axis III: Carpal tunnel, shoulder pain, acid reflux, IBS and Schuermans disease of the spine; Axis V: Current 57, prior 54. Marked and persistent disruption in at least two life domains, moods/emotions and work. (Department Exhibits 26-33).

(16) On November 19, 2010, Claimant was seen at Behavior Health and it was recommended that Claimant continue outpatient therapy one to two times a month to monitor stability and continue to see the agency psychiatrist for medication reviews. (Department Exhibit 22-25).

(17) On January 4, 2011, Claimant was seen at Behavioral Health to work on relapse prevention. Claimant's mood was stable, with no suicidal thoughts or side effects to medication. (Department Exhibit 34-35).

(18) On February 18, 2011, Claimant's X-ray of the lumbar spine showed there is a bilateral L5 spondylolysis with 7 mm anterior spondylolisthesis of L5 on S1. This is unchanged with flexion and extension. No other subluxations are identified. Vertebral body heights are maintained. No fractures are identified. Mild to moderate degenerative spondylolysis is noted throughout the lumbar and lower thoracic spine. Impression: Bilateral L5 spondylolysis associated with a 7 mm anterior spondylolysis of L5 on S1. There is no instability identified on the positional films. Mild to moderate degenerative spondylolysis throughout the lumbar and lower thoracic spine. Claimant's cervical spine x-ray showed there has been anterior discectomy and fusion from C5 through C7. An anterior fixation plate is in place. Alignment is satisfactory. No fractures or other complicating processes were identified. Impression: Status post anterior discectomy and fusion from C5 through C7 with no complicating processes identified. (Department Exhibits 54-55).

(19) On February 25, 2011, the neurologist informed Claimant's doctor that Claimant has had severe cervical spondylosis, stenosis, underwent anterior cervical corpectomy and fusion and is doing well. He has good strength in his upper extremities. He is recovering from that now. His worst pain is in his lower back where he has a spondylosis in his lumbar spine. He does not have neurologic deficit. He does walk with a mild right antalgic gait. He has pain with extension of his back, mild spasm there, but for the most part is neurologically stable. (Department Exhibit 50).

(20) On March 4, 2011, Claimant was seen at [redacted]. Claimant talked about trying to make the decision to have his back surgery.

Claimant says that the pain is constant now and limits him in his daily activities and functioning, but it has not reached the point of being unbearable yet. He states it will probably be within a year and he will be getting the surgery. (Department Exhibits 39-40).

(21) On April 4, 2011, Claimant was seen at [redacted]. Claimant reported he had continued to notice a little difficulty motivating himself to do things and he also keeps having headaches, although most headaches do not last very long, no longer than 15 minutes compared to before his neck surgery when the headaches lasted all day. Approximately every other week he will have a panic attack, suddenly break into a sweat, becomes nauseated, gets light headed, dizzy, etc., otherwise Claimant stated he had been in a fairly good mood, not very depressed as he has been sleeping better and his status was improving. (Department Exhibits 20-21).

(22) On April 12, 2011, Claimant was seen at [redacted] for stomach pain, back pain, right hip pain, dry heaves and dizziness. Assessment: IBS, Gastritis, Chronic pain and Depression and Anxiety. Plan to follow up with pain clinic and counseling. (Department Exhibits 67-68, 72).

(23) On April 29, 2011, Claimant was seen by his neurologist and reported that Claimant had grade 1 spondylolisthesis at the lumbosacral junction. Claimant was going to continue to be treated conservatively and has improved with neck surgery. The neurologist also gave Claimant a prescription for a brace to wear for his back since he has spondylolisthesis. For the most part, Claimant is neurologically stable. (Department Exhibit 49).

(24) On May 27, 2011, Claimant was seen at [redacted], making moderate progress, reporting feeling less depressing and handling things better. (Department Exhibit 46).

(25) Claimant is a 41 year old man whose birthday is [redacted]. Claimant is 5'3" tall and weighs 125 lbs. Claimant completed high school.

(26) Claimant was denied Social Security disability benefits and is appealing that determination.

<u>CONCLUSIONS OF LAW</u>

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 pain, antalgic gait 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 <u>not</u> 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 September 2005; 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 as a machinist 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 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 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 May 2, 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 2, 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 November 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: 11/4/11

Date Mailed: 11/4/11

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]