

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-45340
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
December 7, 2011
Ionia 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 July 29, 2011. After due notice, an in-person hearing was held on December 7, 2011. Claimant and Claimant's representative, [REDACTED], personally appeared and testified.

ISSUE

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

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 11, 2011, Claimant applied for MA-P and Retro-MA.
- (2) On April 25, 2011, the Medical Review Team (MRT) denied Claimant's MA application indicating Claimant's impairments lack duration of 12 months pursuant to 20 CFR 416.909.
- (3) On April 28, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On July 29, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 8, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits stating Claimant retains the capacity to perform light work. (Department Exhibit B, pages 1-2).

- (6) Claimant has a history of degenerative disc disease, myocardial infarction (MI) and hyperlipidemia.
- (7) On February 23, 2011, Claimant went to the emergency room complaining of chest discomfort. He had not followed up with any primary care physician for several years. The pain was intermittent with associated diaphoresis and mild shortness of breath. The initial EKG was nondiagnostic, but because of his unrelenting symptoms, he was admitted to the hospital for acute coronary syndrome and a history of tobacco use. He underwent staged intervention, secondary to a 100% occluded right coronary artery and staged intervention to the left anterior descending bifurcation. LV gram done initially demonstrated ejection fraction of 45%. He was discharged home on February 25, 2011 with Plavix, Metoprolol tartrate, Pravachol, Lisinopril, Aspirin, Nitroglycerin and Chantix starter pack, and instructed to return to the emergency room if he develops any further symptoms.
- (8) On March 7, 2011, Claimant was seen by his cardiologist for post invasive procedure follow-up. He has known coronary artery disease with history of myocardial infarction and coronary revascularization. He recently presented to the emergency room with chest pain and evidence of acute inferior myocardial infarction. Intervention involved percutaneous coronary intervention in February 2011, where the right coronary artery was stented urgently and the left anterior descending artery was stented elective a few days later. He seems to have done well since hospitalization, able to perform most of ordinary daily activities without significant limitation. He back continues to bother him and he has developed some oral sores. He reports recent palpitations. The symptoms are described as skip beats. The episodes are usually brief and self limiting. Coarse breath sounds noted. The EKG shows SR with inferior changes consistent with inferior myocardial infarction at 60 beats per minutes and is unchanged since hospital discharge. Ischemic cardiomyopathy, ejection fraction 45% by cardiac catheterization.
- (9) On March 29, 2011, a doctor completed a physical capacities assessment of Claimant and indicated he is diagnosed with lumbar disc disease with radiculopathy C4-S1, cervical disc disease, myocardial infarction and two stents. The doctor indicated he could not stand, or lift anything over 10 pounds, and he could sometimes up to two hours, sit, bend or grasp using his right side. The doctor found that based on Claimant's pain, Claimant would have severe permanent limitations as to pace and concentration, he would need a sit-stand option as symptoms dictate, he would likely miss 3 or more days per month of work and would likely be tardy 3 or more days per month, he was best suited for part-time work as opposed to full-time work, he would need breaks from work as symptoms dictate and the

combined effect of these impairments on his activities is greater than the effect of each impairment considered separately.

- (10) On April 6, 2011, a cardiologist completed a medical examination of Claimant on behalf of the department. The cardiologist noted Claimant was diagnosed with coronary artery disease, recent myocardial infarction, cardiomyopathy, and hyperlipidemia. Claimant walks with a limp and uses a cane. He was short of breath and coarse lung scales. The cardiologist found Claimant was improving and able to meet his needs in the home.
- (11) On July 18, 2011, Claimant followed up with his cardiologist. He has known coronary artery disease with history of myocardial infarction and coronary revascularization this past February. He received a stent to the right coronary artery and left anterior descending artery. He seems to have done well since his last visit, able to perform most of ordinary daily activities without significant limitation. He seems to have remained free of any symptoms suggesting angina, heart failure, significant arrhythmia or claudication. Shortly after his last office visit, he developed some atypical chest pain. It was described as sharp, pin pricks. After increasing his water intake, the symptoms seem to have resolved. He denies shortness of breath. He seems to have no edema and denies palpitations. He quit smoking cigarettes and is not smoking electronic cigarettes.
- (12) Claimant is a 49 year old man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 175 lbs. Claimant completed high school and was a supervisor for a year and prior to that worked in sales for seven years. Claimant last worked in December 2006.
- (13) Claimant had applied for Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

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).

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 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 December, 2006; 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 salesman in a department store 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 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 March 11, 2011 MA/Retro-MA 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 eligibility purposes.

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

1. The department shall process Claimant's March 11, 2011 MA/Retro-MA 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: December 20, 2011

Date Mailed: December 20, 2011

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]