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

IN THE MATTER OF:

[redacted]

Reg. No.: 2011-50913
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: December 6, 2011
County: Wayne-31

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 December 6, 2011. Claimant 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 May 17, 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 November 4, 2010, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.

(2) On July 20, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant was capable of performing other work. SDA was denied due to lack of duration.

(3) On August 15, 2011, the department sent out notice to Claimant that his application for Medicaid had been denied.

(4) On August 25, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On October 24, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits stating Claimant retains the capacity to perform a wide range of light work. (Department Exhibit B, pp 1-2).

(6) Claimant has a history of blindness in his left eye, diabetic retinopathy, hypertension, hyperlipidemia, renal insufficiency, anemia, diabetes and neuropathy.

(7) On March 24, 2010, Claimant underwent surgery of his left eye for a diabetic vitreus hemorrhage with traction diabetic detachment. After the surgery, the surgeon noted that Claimant will need additional surgery to remove the rest of the scars and possibly the lens, which was cataractous to start with, as well as the possibility of scleral buckling, which was deferred until the next surgery. Claimant's prognosis for recovery of any good vision was guarded. (Department Exhibit A, pp 25-26).

(8) On March 27, 2010, Claimant was admitted to the hospital with a history of a headache and dizziness, associated with a known history of hypertension and renal insufficiency. On initial presentation at the emergency department, Claimant's blood pressure was 200/104. He was admitted in serious condition for further monitoring and evaluation of his elevated blood pressure. A CAT scan of Claimant's head was negative for any intracranial process. No intracranial hemorrhage, mass effect or midline shift. Claimant was discharged on March 29, 2010, with a diagnosis of hypertensive urgency and instructed to follow-up with his primary care physician. (Department Exhibit A, pp 8-17).

(9) On April 8, 2010, Claimant went to the emergency room complaining of a headache and pain in his left eye. Claimant stated he had surgery in his left eye approximately 3 weeks ago for diabetic retinopathy. Blood pressure was 223/105. He appeared to be in moderate distress. The intraocular pressure of the right eye was 20, the left eye was 78. He was diagnosed with acute suspected glaucoma of the left eye. Claimant's ophthalmologist was contacted and Claimant was transferred in very serious condition to the hospital where his ophthalmologist practices. Claimant was admitted to the hospital for surgery of a diabetic vitreous hemorrhage with acute glaucoma, with cataract formation. After the surgery, the surgeon noted prognosis was poor, first because of

consistent high intraocular pressure that made Claimant's pain intolerable, and that Claimant did not call until that time had elapsed. Secondly, because of the extensive fibrovascular proliferation and very severe retinopathy in the left eye. (Department Exhibit A, pp 18-24, 27-38).

(10) On September 7, 2010, Claimant presented at the eye institute for acute vision loss in his right eye. Vision loss occurred 2 days ago. It was sudden and painless. He woke up with blurred vision. He saw his optometrist earlier today and was dilated, got fluorescein and was sent over to the eye institute for a second opinion of the vitreous hemorrhage. Claimant is a poorly controlled diabetic. Visual acuity was 20/200. On 9/5/10, Claimant had a vitreous hemorrhage with packed heme over entire posterior pole that is starting to fibrose. He was sent to the eye institute for evaluation, likely needs PPV due to nature of packed heme. Optometrist's policy is not to do a second eye procedure when first eye has lost vision. Follow-up appointment on 9/7/10 at the optometrist's office showed diffuse ischemia and pinpoint diabetic retinopathy (PDR). Room for panretinal photocoagulation (PRP) in the right eye, performed today. Claimant was instructed to follow-up next week with sweeps to rule out macroaneurysm. (Department Exhibit A, pp 62-66).

(11) On September 15, 2010, Claimant went to the eye institute for follow-up from his last retinal diabetic exam a week ago. He was still experiencing blurred vision. Visual acuity in his right eye was 20/200. The vessels showed attenuated fibrovascular proliferation along arcades. Panretinal photocoagulation (PRP) performed. (Department Exhibit A, pp 59-61).

(12) On October 25, 2010, Claimant underwent panretinal photocoagulation (PRP) laser treatment on his right eye. The visual acuity was noted to be 20/400. During the pre-op administration of anesthesia of topical proparacaine, Claimant experienced increased bleeding and was unable to tolerate laser 2/2 pain, however he was well treated. (Department Exhibit A, pp 52-54).

(13) On November 22, 2010, Claimant went to the eye institute for follow-up of his retinal diabetic exam from two weeks ago. Claimant was complaining of blurred vision, unchanged, since his last visit. According to his past systemic history, Claimant was initially diagnosed with Diabetes Mellitus, type 2 in 1997. Claimant's visual acuity in his right eye was 20/400, Claimant had no light perception (NLP), or total blindness in his left eye. Claimant's right eye showed a vitreous hemorrhage. The vessels of his right eye were attenuated with fibrovascular proliferation along arcades, with early contracture. Claimant was in extreme pain which limited treatment, even with Tylenol preop. The ophthalmologist noted Claimant's vision was worsening in his right eye. The subhyloid heme was obscuring post pole with early FVP contracture along arcades, and Claimant needed

medical clearance for urgent surgery. The nuclear sclerosis was visually significant in the right eye for surgical purposes, but will need cataract extraction during or prior to surgery. (Department Exhibit A, pp 44-47).

(14) On January 17, 2011, Claimant underwent panretinal photocoagulation (PRP) laser treatment on his right eye. His visual acuity was noted to be 20/400. He was diagnosed with proliferative diabetic retinopathy and instructed to return in 6 weeks for follow up. (Department Exhibit A, p 43).

(15) On February 28, 2011, Claimant underwent panretinal photocoagulation (PRP) laser treatment on his right eye. His visual acuity was noted to be 20/200 in the right eye with no light perception (NLP), or total blindness in the left eye. (Department Exhibit A, p 42).

(16) On April 4, 2011, Claimant was seen at the eye institute for a follow-up retinal exam complaining of blurred vision in his right eye associated with activities. Visual acuity was 20/50. Claimant was diagnosed with proliferative diabetic retinopathy, hypertensive retinopathy and nuclear sclerosis in his right eye, which was visually significant for surgical purposes as he will need cataract extraction (CE) during or prior to surgery. (Department Exhibit A, pp 39-41).

(17) On July 12, 2011, Claimant was seen at the eye institute for follow-up of his retinal diabetes. Visual acuity in the right eye was 20/50 with attenuated fibrovascular proliferation along arcades, early contracture. Preretinal heme cleared. Vision stable. FVP in the post pole with contracture along arcades sparing fovea. Fovea flat on exam and OCT today. Monitor for now. (Department Exhibit D, pp 1-4).

(18) Claimant is a 51 year old man whose birthday is [redacted] Claimant is 5'7" tall and weighs 191 lbs. Claimant completed high school and two years of college.

(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 diabetic retinopathy, blindness in his left eye 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 March 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 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 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 managing a restaurant around

unprotected and dangerous stoves and ovens 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 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 November 4, 2010, 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 November 4, 2010, 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 June 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: 6/7/12

Date Mailed: 6/7/12

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

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