

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-53954
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: August 23, 2012
County: Ogemaw

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, an in-person hearing was commenced on August 23, 2012, at the DHS Office in West Branch, Michigan. Claimant, represented by [REDACTED] from [REDACTED], personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payment Worker [REDACTED].

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 April 11, 2011, Claimant filed an application for MA-P/Retro-MA and SDA benefits alleging disability.
- (2) On June 17, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that his non-severe impairment lacks duration of 12 months pursuant to 20 CFR 416.909. SDA was denied per BEM 261, physical or mental impairment does not prevent employment of 90 days or more.
- (3) On June 21, 2011, the department caseworker sent Claimant notice that his application was denied.

- (4) On September 16, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On November 15, 2011, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of light exertional work. (Department Exhibit B).
- (6) Claimant has a history of degenerative disc disease, facet arthropathy, a laminectomy, chronic low back pain, radiculopathy, depression, cardiometabolic syndrome and insomnia.
- (7) On November 8, 2010, Claimant met with his neurosurgeon who recommended surgical decompression and fusion of the L5-S1 and possibly at L4-L5 as he had exhausted conservative measures. His EMG showed evidence of right S1 radiculopathy with some ongoing denervation. His previous myelogram CAT scan had shown chronic disc at L5-S1 with foraminal stenosis. Claimant was also warned that there was no guarantee that the surgery would fully fix his back pain, but that the surgery was more for his leg symptoms. (Department Exhibit A, pp 30-31).
- (8) On January 4, 2011, Claimant underwent back surgery consisting of a posterior lumbar decompression with right sided L5-S1 laminectomy, foraminotomy, and discectomy; a posterior lumbar fusion L4-L5, L5-S1 with Aspen interspinous device times two; a pedicle screw fixation right L5-S1 with pedicle screw instrumentation and bony arthrodesis L4-L5, L5-S1 with auto allograft bone chips and EVO-3 putty. He was discharged on January 6, 2011 neurologically intact. (Department Exhibit A, pp 24-29).
- (9) On February 22, 2011, a CT lumbar spine without contrast revealed moderate degenerative disc disease at L4-L5 and L5-S1. There is the right more than left foraminal stenosis at L5-S1. There is focal central disc protrusion at L4-L5. There is central and right paramedian posterior spur at L5-S1 contributing to the right neural foraminal narrowing. There is laminectomy and spinal fusion at L4-L5 and L5-S1. (Department Exhibit A, p 20).
- (10) On March 31, 2011, a nuclear medicine bone scan revealed mild increased MDP uptake anteriorly at L5-S1 most consistent with degenerative disc disease. There is also mild increased MDP uptake posteriorly and to the right at L5-S1 most consistent with facet arthropathy. A CT thorax with IV contrast showed a 4.8 x 4.2 cm left anterior mediastinal mass. The differential diagnosis

includes residual thymic tissue/thymoma, lymphoma or teratoma. The CT abdomen and pelvis without contrast showed a 2 mm nonobstructive left lower pole renal calculus. (Department Exhibit A, pp 15-17).

- (11) On May 2, 2011, Claimant underwent a medical examination on behalf of the department. Claimant was diagnosed with acute and chronic low back pain status post motor vehicle accident in 2006; status post lumbar laminectomy; cardiometabolic syndrome and depression related to chronic back pain. A musculoskeletal exam revealed marked tissue texture abnormalities, loss of normal lumbar lordosis and decreased range of motion of lumbar spine in all planes. He was unable to flex at lumbar spine due to increased pain and had decreased deep tendon reflexes on patellar. His affect was depressed. The examining physician opined that he was in stable condition and able to meet his needs in the home. (Claimant Exhibit A, pp 6-7).
- (12) On January 16, 2012, the CT of the cervical spine without contrast revealed multilevel minimal spondylotic changes in the cervical spine. There is a reversal of cervical lordosis. There are anterior osteophyte formations at C6-C7 and C7-T1. The CT of the lumbosacral spine showed postsurgical changes with metallic plate at the facet joint of the level of L4 and L5 with bony fusion. There is a moderate-sized herniated disc which is partly calcified at the periphery at the level of L5-S1 on the right side and causing compression of the S1 nerve root and partly extends the neural foramina and mild central disc herniation at the level of L4-L5. (Claimant Exhibit A, pp 59-61).
- (13) On February 1, 2012, Claimant went to the emergency department complaining of chest pain. He was diagnosed with chest pain, chronic low back pain status post motor vehicle accident in 1998 with fractured left arm and continued chronic pain since that accident, status post surgical repair of aorta after motor vehicle accident, history of anemia requiring a blood transfusion, history of lumbar radiculitis resulting in a lumbar laminectomy. He was admitted to the hospital on an emergent basis and administered nitroglycerin. The CT of the lumbar spine showed postsurgical changes with metallic plate at the facet joint of L4-L5 with bony fusion, moderate sized herniated disc at L5-S1 and on the right side causing compression of the S1 nerve root, mild central disc herniation at the level of L4-L5. He was evaluated by cardiology and diagnosed him with atypical chest pain. He was prescribed Zocor and he was discharged on February 2, 2012 in stable condition with no chest pain. (Claimant Exhibit A, pp 19-38).

- (14) On August 10, 2012, Claimant had a neurological consultation. Claimant underwent a pedicle screw fusion with interbody fusion but has continuing ongoing pain. He has intense chronic severe pain which is quite limiting and disabling. He has problems with back pain, numbness and paresthesias of the extremities with ambulation. He walks with significant antalgia. He has decreased range of motion with associated spasms. Mechanical findings are positive straight leg raising at 45 degrees, pain in right foot and sensory change in L5 distribution. The neurosurgeon opined that Claimant has issues relative to severe pain in the back with claudication and lumbar spinal canal stenosis. The CT scans were reviewed with Claimant and there was a large disc fragment at the L5-S1 with spinal stenosis. Based on the exam, the neurosurgeon opined that Claimant would benefit from decompression. (Department Exhibit A, pp 185-186).
- (15) Claimant is a 30 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 270 lbs. Claimant completed high school and some college. Claimant has worked as a security officer for 10 years in July, 2010.
- (16) 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 Michigan 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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

. . . 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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c). If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

(1) Medical history.

- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d). The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools.

Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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).

Based on Finding of Fact #6-#15 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his physical impairments meet or equal Listing 1.04:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his April 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 April 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 September, 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.

It is SO ORDERED.

/s/

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

Date Signed: September 28, 2012

Date Mailed: September 28, 2012

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.

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