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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012-15048
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: February 8, 2012
County: Kalkaska

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, an in-person hearing was held on February 8, 2012. 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 9, 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 September 8, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.

(2) On November 16, 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 for lack of duration.

(3) On November 22, 2011, the department sent out notice to Claimant that his application for Medicaid had been denied.

(4) On December 5, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On January 8, 2012, 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. SDA was denied due to lack of duration. (Department Exhibit B, pp 1-2).

(6) Claimant has a history of a triple bypass, two heart stents, coronary artery disease, a damaged rotator cuff, back pain, shortness of breath, hyperlipidemia, hypertension and sleep apnea.

(7) On July 13, 2011, Claimant went to the emergency department complaining of pain in his right shoulder. Claimant has had pain off and on in his shoulder since he had a rotator cuff repair on it three years ago. He was diagnosed with a right shoulder sprain and instructed to rest the arm for a few days and wear a sling. (Department Exhibit A, pp 65-66).

(8) On August 5, 2011, Claimant was seen in the emergency department for chest pain. An EKG was done on admission and showed no evidence of any acute ischemic pattern or acute changes. Initial cardiac markers showed a negative troponin at less than 0.03 and a myoglobin of 80. Claimant's resting electrocardiogram (ECG) was abnormal showing nonspecific T wave abnormality, but there were no previous ECGs available for comparison. The portable chest x-ray showed no evidence of any acute pulmonary pathology. An IV was started of normal saline. Claimant was given aspirin and nitroglycerin with no relief. A GI cocktail was administered and made his pain worse. Claimant was then given a morphine IV and this totally resolved the pain. Because of Claimant's history of a triple bypass on March 28, 2011, Claimant was kept an additional three hours and the labs were run again and were negative. Claimant was discharged and instructed to follow-up with his primary care physician. (Department Exhibit A, pp 57-59).

(9) On August 22, 2011, Claimant went to the emergency department with complaints of marked exertional dyspnea. He has had a 24 pound weight gain over a 2 month period, but no complaint of pedal edema, no PND, or cough. Saline lock was instilled, lab studies and chest x-ray performed. Chest x-ray shows no acute process, but did show some cardiomegaly that has been present on previous examinations. The ECG was borderline when compared with the ECG from August 5, 2011, but no significant change was found. Claimant's case was discussed with cardiology with the consensus that there is a possibility there could be

some postop pericardial effusion present. He was diagnosed with exertional dyspnea and angina and scheduled for an echocardiogram. (Department Exhibit A, pp 49-56).

(10) On September 5, 2011, Claimant was seen in the emergency department for chest pain, which began in his left anterior chest. It hurt worse when he breathes or uses his left upper arm. He had coronary artery bypass grafting in March 2011. Chest x-rays show no interval change. Cardiac markers were negative and the laboratory studies were normal. He had a saline lock instilled and was given Toradol by IV which significantly reduced his discomfort. His resting ECG was abnormal when compared with his ECG from August 22, 2011, but no significant change was found. He was diagnosed with chest wall pain and coronary artery disease status post coronary artery bypass grafting and discharged. (Department Exhibit A, pp 42-48).

(11) On September 16, 2011, Claimant was undergoing a stress test at Traverse Heart and Vascular and developed chest pain. He has had chest tightness since August 2010. He has a known history of coronary artery disease status post coronary artery bypass graft. Claimant did not complete his stress test secondary to pain. Claimant reports having some mild nausea as well as pain radiating into his right arm from the mid chest, as well as mild shortness of breath. He has undergone a three-vessel coronary artery bypass grafting in March 2011, in Arizona. He had a recent echocardiogram revealing preserved ejection fraction and mild valvular heart disease. Claimant was admitted to the hospital with chest pain. His cardiac marker series was negative. He had a CTA of the chest completed which did not demonstrate a pulmonary embolism or thoracic aortic dissection. He has mild pulmonary venous congestion. He had intermittent discomfort which was also treated with Toradol. He does have chronic pain. Claimant underwent cardiac catheterization on September 19, 2011 and his ejection fraction was 55%. It was noted to have sequential lesions in the circumflex which were treated with 2 bare metal stents. He was monitored on the cardiac telemetry unit post intervention. EKG demonstrated sinus rhythm first degree AV block, incomplete right bundle branch block. Claimant was discharged on September 20, 2011, with instructions to remain on the aspirin and Plavix and never to stop unless approved by his cardiologist. Final diagnosis: Chest pain, resolved; coronary artery disease; history of coronary artery bypass grafting; status post bare metal stent x 2 to a native circumflex artery; chronic pain syndrome affecting right shoulder; hyperlipidemia; and mild anemia. (Department Exhibit A, pp 17-41).

(12) On November 17, 2011, Claimant was admitted to the hospital with left elbow pain. He had no chest pain and remained stable throughout the

course of the admission. He was discharged on November 18, 2011, with a final diagnoses of an acute left lateral epicondylitis; coronary artery disease with preserved left ventricular ejection fraction, asymptomatic, with no acute findings. He will continue on his aspirin, ACE, beta blocker, statin and Plavix; Hypertension; Hyperlipidemia, and chronic pain syndrome of the right shoulder.

(13) On December 28, 2011, Claimant was admitted to the hospital after undergoing a stress echocardiogram. He achieved 75% of his predicted heart rate before complaining of progressive chest discomfort during the treadmill testing. It was a submaximal stress test. On December 29, 2011, Claimant underwent cardiac catheterization. An echocardiogram showed Claimant's left ventricle is normal in size and function and has an estimated ejection fraction of 60%. Claimant was discharged on December 29, 2011 with a final diagnosis of atypical chest pain; chronic pain syndrome; coronary artery disease; hypertension; hyperlipidemia; questionable sleep apnea and an upper respiratory infection.

(14) On January 30, 2012, Claimant saw his primary care physician regarding his constant and worsening right shoulder pain. The pain is aching with no radiation and aggravated by bending, lifting and movement. The pain is relieved by heat and pain/RX medications. Associated symptoms include crepitus, decreased mobility, joint tenderness, nocturnal pain, numbness, popping and moderately reduced range of motion.

(15) Claimant is a 49 year old man whose birthday is [redacted]. Claimant is 6'1" tall and weighs 260 lbs. Claimant completed high school and has an Associate of Arts degree.

(16) Claimant was appealing the denial of Social Security disability benefits 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).

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.

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 chest pain, shortness of breath 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 2008; 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 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 being an electrician 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 Claimant's:

> (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
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> (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 September 8, 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 September 8, 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 May 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: 6/1/12

Date Mailed: 6/1/12

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

[redacted]