

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-54547
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: August 9, 2012
County: Ionia

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the 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, a telephone hearing was commenced on August 9, 2012, from Lansing, Michigan. Claimant personally appeared and testified along with his sister. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist, [REDACTED]

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 September 13, 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 December 12, 2011, Claimant filed an application for MA-P and SDA benefits alleging disability.

- (2) On May 11, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that he was capable of performing other work, pursuant to Medical/Vocational Rule 202.14, 20 CFR 416.920(f).
- (3) On May 18, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On May 29, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 9, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pp 1-4).
- (6) Claimant has a history of a traumatic brain injury (TBI), short term memory loss, lumbar spondylosis, osteoarthritis, depression, benign prostatic hypertrophy, erectile dysfunction, hypertension and degenerative arthropathy and gout in his knees.
- (7) On January 10, 2011, Claimant saw his primary care physician at the Veterans Administration (VA), for a prostate examination. His hypertension had improved. He was asking for an increase in his Zoloft for his depression. He also has osteoarthritis and his knees and ankles hurt him a lot and he has severe arthritis of his joints, especially his spine composing of stenosis and problems with bulging discs. He was requesting a disability sticker for his car, stating he had one in the past from another state but it had expired. Claimant's Zoloft was increased and his examining physician signed a disability form for him in regards to applying for his State Disability Placard. (Department Exhibit C, pp 21-23).
- (8) On January 14, 2011, Claimant underwent a neuropsychological consult for a level two traumatic brain injury (TBI) assessment. Claimant reported mild anxiety and mild depression. He also indicated he was experiencing difficulties with his sleep. He was referred due to complaining of memory problems. His history included being caught between racks at work in 1995 and being pushed from behind by a forklift. He does not recall the events, but must have sustained some type of head trauma as he suffered a skull fracture and required surgical decompression with placement of plates and screws. He also suffered other orthopedic injuries including a hip fracture and he was in rehab for several months. Claimant's cognitive complaints were vague and he was in general, a poor and inconsistent historian. Claimant had a relatively non-specific neuropsychological exam. Symptoms following a TBI are not progressive in nature as his symptoms are. Most likely, his subjective complaints are due to mental health issues and chronic pain. (Department Exhibit C, pp 24-28).

- (9) On January 27, 2011, Claimant met with his primary mental health provider at the Veterans Administration (VA). He stated he went to Ann Arbor and was very frustrated because he was told his headaches may or may not be related to his previous head injury. He complained of headaches and increasing forgetfulness. The examining physician opined that Claimant's symptoms seemed to be that he indeed had a head injury that impacted him and this is likely influenced by mental health factors. The physician explained that even if he was changed by the accident, his energy was best spent focusing on how he could live as well as staying positive with the focus on adaptive behaviors and functionality, minimizing depression, and coping with pain. He was diagnosed with adjustment disorder, mixed emotions and a cognitive disorder with a history of TBI. (Department Exhibit C, pp 19-21).
- (10) On January 26, 2012, Claimant was treated at the VA for chronic medical problems. He had left knee pain and his knee gave out a few days ago. He had a factory accident in 1995 when a forklift cut him on the back and he was caught between a rack and the forklift. His blood pressure was well controlled. Regarding his depression, he was not taking medication anymore, as he does not think he is depressed. He has benign prostatic hypertrophy and he is doing well on medications with no symptoms. He also has erectile dysfunction and osteoarthritis and he is doing well with the use of medications. (Department Exhibit C, pp 18-19).
- (11) On February 27, 2012, Claimant underwent an audiology evaluation. Claimant was diagnosed with tinnitus and had moderate conductive hearing loss for the right ear, and a middle ear disorder not related to noise induced hearing loss. Hearing thresholds for the left ear showed a mild to moderate high frequency, noise induced type. It is more likely that the tinnitus condition is related to his head injury concerning the conductive hearing loss in his right ear, with the head injury relationship and his facial nerve issues. (Department Exhibit A, pp 13-26).
- (12) On April 24, 2012, Claimant underwent a medical examination on behalf of the department. His chief complaints were bilateral knees, left ankle, left wrist and head injury. He appeared to be in mild discomfort. There was synovial thickening at the bilateral knees, mostly over the patellar joints with crepitance. Claimant had mild difficulty getting on and off the examination table, mild difficulty heel and toe walking, moderate difficulty performing a partial squat and was unable to hop. He walked with a mild left limp and a wide based gait without the use of his left knee brace. Claimant's most significant joints with degenerative arthropathy appeared to be his knees. He had some patellar chondromalacia and degenerative

arthropathy in the anterior joint space and he wore a prescribed knee brace on the left knee. He was not undergoing any treatment. In the short term, the use of his brace would be helpful. This may be potentially remedial to some degree or at least controllable with conservative management. The remainder of his joints appeared relatively stable. Claimant complained of problems with his memory and concentration, however his mental affect was stable during the exam. (Department Exhibit A, pp 8-12).

- (13) On May 14, 2012, Claimant went to the emergency department complaining of knee pain. The pain was definitely worse when weight bearing. He had a hard time extending the knee due to pain. The knee was warm to the touch with obvious effusion and ballottement noted. Claimant was administered Dilaudid and had an arthrocentesis of the left knee. This fluid did come back demonstrating a white count of 203,000. Claimant was diagnosed with septic arthritis of the left knee and he was taken to the operating room. X-rays of Claimant's left knee showed a normal alignment on all projections, without significant joint space narrowing. There was very minimal osteophyte. Bone density was normal, without fracture or mass identified. Suprapatellar moderate joint effusion was suspected. In the operating room, Claimant underwent a left knee arthroscopy and irrigation and debridement with a partial lateral meniscectomy. He was discharged on May 17, 2012 with a diagnosis of acute gouty inflammation of the left knee with effusion, suspected septic knee resolved, and status post drainage and irrigation of the left knee. (Department Exhibit C, pp 38-58).
- (14) On May 31, 2012, Claimant presented to the emergency department stating that his right knee had been painful for two weeks. He had not had fevers or chills, but had significant pain with range of motion of both knees. He had a hard time walking, secondary to the pain. There was a moderate effusion on the right knee. He was given Dilaudid and a gram of Ancef prior to the right arthrocentesis. X-rays of Claimant's right knee showed a narrowing of the lateral compartment of the right knee. In comparison to the 5/14/12 left knee radiographs, it was more pronounced in the right knee than the left knee. On the lateral view a joint effusion was evident, although slightly less pronounced than was demonstrated on the 5/14/12 exam. He was diagnosed with an acute gouty flare and given a prescription for Indomethacin. He had crutches and a seated walker at home. (Department Exhibit C, pp 63-65).
- (15) Claimant is a 53 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 235 lbs. Claimant completed high school.

- (16) Claimant had applied for Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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.

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(a). 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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 limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In Claimant's case, the ongoing pain and depression 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 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 and mental 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 medical findings, that Claimant cannot return to his past relevant work because the rigors of working as a home health care provider and grinding out flaws in bumpers on an assembly line are completely outside the scope of his physical and mental 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;
- (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 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). Based on Claimant's vocational profile (approaching advanced age, Claimant is 54, has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA and SDA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of his December 12, 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 December 12, 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 October, 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: October 2, 2012

Date Mailed: October 2, 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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