

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

IN THE MATTER OF:



Reg. No.: 2012-58539
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: September 26, 2012
County: Livingston

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 September 26, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] [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 May 7, 2012, Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
- (2) On April 21, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that he was capable of performing other work, pursuant to 20 CFR 416.920(f).
- (3) On May 7, 2012, the department case worker sent Claimant notice that his application was denied.
- (4) On June 7, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 20, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform unskilled, light work with right upper extremity limitations. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of polyneuropathy, degenerative lumbar disc disease, bursitis, arthritis, tendonitis, blind in right eye, migraines, bilateral carpal tunnel, stenosis, anemia, bipolar disorder and bone spurs in right shoulder.
- (7) On March 9, 2010, Claimant's treating physician completed a medical examination. Claimant is diagnosed with chronic pain in his lower extremities and back. He has a perforated ear drum and is blind in his right eye. He complained of pain on the bottom of his feet. He is depressed without tremor. His treating physician opined that Claimant's condition is deteriorating. He limited Claimant to lifting no more than 10 pounds, walking no more than 2 hours and sitting no more than 6 hours in an 8-hour workday. He is also unable to operate foot or leg controls. Mentally, Claimant is limited in sustained concentration, following simple directions and social interaction. (Department Exhibit A, pp 12-14).
- (8) On January 4, 2011, Claimant underwent a psychological examination on behalf of the Social Security Administration. The examining psychologist opined that Claimant's problems are primarily physical and his condition is treatable with therapy or medical intervention. There is no impairment in his ability to understand and carry out simple directions. He is verbal, pleasant, responds to humor and smiles easily. There is no apparent mood disorder. Depression varies in intensity from day to day. Today he does not present as depressed. He does present with pain, alternating from standing to sitting, sitting on one side. Diagnosis: Axis I: Depression; Alcohol dependence in sustained remission; Axis V: GAF=58. (Department Exhibit B, pp 32-36).
- (9) On January 10, 2011, Claimant had a medical examination by the Disability Determination Service. Claimant's chief complaints were blurry vision, bulging discs and burning, stabbing pain of the feet. The examining physician opined that Claimant has degenerative disc disease of the lumbosacral spine but there is no radiculopathy. He has polyneuropathy, probably from alcohol. He has poor vision of the right eye with finger counting present in that eye. (Department Exhibit B, pp 41-49).

- (10) On September 19, 2011, an MRI lumbar spine without contrast showed degenerative spondylosis, most pronounced at the L4-L5 level where there is a broad-based disc bulge, small annular tear, mild canal stenosis and bilateral neural foraminal narrowing. The MRI of Claimant's right shoulder revealed acromioclavicular arthropathy/overgrowth with distal clavicular down spur; subacromial-subdeltoid bursitis; supraspinatus and subscapularis tendonitis. Moderate grade partial thickness articular side tear distal supraspinatus tendon. Very mild articular side partial thickness tear of subscapularis tendon. Limited evaluation of the glenoid labrum, although there is a suspicion of a SLAP tear. (Department Exhibit A, pp 28-32).
- (11) On October 13, 2011, Claimant presented with foot and shoulder pain at the physician's office. Since 2008, Claimant has increased difficulty placing weight on foot. He places excess weight on inside of foot in order to reduce pain. His shoulder pain began six years ago. The physician noted the right shoulder was unable to progress beyond 90 degrees with active or passive motion. He had tenderness near the acromion. He had a hammer toe visible on fifth digit with corresponding calluses on dorsum of foot. He also reported a general sense of numbness in both legs. (Department Exhibit A, pp 24-27).
- (12) On December 8, 2011, Claimant participated in a medical evaluation on behalf of the department. Claimant was diagnosed with spinal stenosis. The examining physician opined Claimant's condition was stable. (Department Exhibit A, pp 10-11).
- (13) On December 14, 2011, x-rays of Claimant's left shoulder revealed mild to moderate osteoarthritic changes seen in the left AC joint. The right shoulder showed mild osteoarthritic changes in the AC joint with inferiorly projecting osteophyte off the distal clavicle. (Department Exhibit A, p 33).
- (14) On March 19, 2012, Claimant completed the initial bio-psycho-social assessment at community mental health. Claimant presents due to persistent depressed mood since 1999, crying spells, anhedonia, suicidal ideation, social isolation, decreased appetite and sleep and difficulty sustaining attention and concentration. Claimant is unemployed due to physical injuries. He has a history of psychiatric hospitalizations for 2001, 2008 and inpatient IOP substance abuse hospitalizations in 1999 and 2004. Claimant stated that he has had at least six overnight stays in the emergency room since 2008 due to suicidal ideation with intent/plan. His last psychiatric hospitalization was in December, 2011 in Owosso

where he was prescribed Celexa for depressive symptoms. He was unable to fill the prescription due to lack of funds. He has been using the suicide hotline as a means of support. He had a depressed mood and fair judgment, however his impulse control, and insight were poor. His sleep was decreased due to his inability to maintain consistent sleep due to physical pain and/or rumination. Diagnosis: Axis I : Major depression, recurrent, moderate; Undifferentiated attention-deficit disorder (ADD); Axis II: Borderline personality disorder (rule out); Axis III: Sciatica; Rotator cuff; One eye-other blind; Axis IV: Housing problems; Economic problems; Problem accessing healthcare; Occupational problems; Axis V: GAF=55. (Department Exhibit A, pp 35-39).

- (15) On March 22, 2012, an orthopedist completed a medical examination of Claimant. He was diagnosed with a right shoulder arthroscopy and SLAP lesion debridement. He was generally withdrawn. The orthopedist found Claimant's condition was improving. (Department Exhibit A, pp 15-16).
- (16) On March 23, 2012, Claimant's case manager from community mental health services wrote a letter informing the department that she was in the process of assisting Claimant gathering information for his application for Medicaid. Additionally, the caseworker reported that Claimant had been referred to the SOAR program which assists consumers who are at risk of homelessness in applying for social security benefits. Claimant was considered a high priority due to his current living situation, lack of income and significant medical and psychiatric symptoms. (Department Exhibit A, p 24).
- (17) Claimant is a 46 year old man whose birthday is [REDACTED]. Claimant is 6'0" tall and weighs 225 lbs. Claimant completed the eighth grade.
- (18) 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 MAC R 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 pain in his legs and feet, his inability to lift his right arm due to the torn rotator cuff, blindness in one 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 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 2007; 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 working as a brick layer is 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 medical record, in particular his polyneuropathy, untreated depression and numerous psychiatric hospitalizations, 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 F.2d 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 number 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 May 7, 2012 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 May 7, 2012 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.

/s/

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

Date Signed: October 12, 2012

Date Mailed: October 12, 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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