

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-62506
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 25, 2012
County: Genesee-02

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 October 25, 2012, in Genesee County. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [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 February 11, 2013, 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) and Retro-MA benefits?

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 January 27, 2012, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On March 7, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant was capable of past relevant work, pursuant to 20 CFR 416.920(E).
- (3) On March 6, 2012, the department sent notice to Claimant that his application for Medicaid had been denied.

- (4) On March 16, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 16, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating that Claimant retains the capacity to perform simple and repetitive tasks that avoids the use of ropes, ladders, scaffolding and more than concentrated exposure to unprotected heights and dangerous machinery. (Depart Ex. B, pp 1-2).
- (6) On February 11, 2013, the SHRT reviewed the newly submitted evidence and upheld the denial of MA -P and Retro-MA benefits indicating Claimant would reasonably retain the ability to perform unskilled work. (Depart Ex. C, pp 1-2).
- (7) Claimant has a history of grand mal seizures, hypoglycemia, irritable bowel syndrome (IBS), scoliosis, chest pain, migraines, Chiari I Malformation, and right bundle branch block.
- (8) On July 28, 2011, Claimant was admitted to the hospital after a loss of consciousness and possible seizure. He had 2 episodes of hypoglycemia a month ago associated with light headedness and was brought to the emergency room. While in the ER today, he had three seizures. He was discharged on July 29, 2011. (Depart Ex. A, pp 55-108).
- (9) On December 20, 2011, Claimant was admitted to the hospital with chest pain. Chest x-ray was negative and an EKG was done which showed normal sinus rhythm. He was discharged on December 23, 2011. (Depart Ex. A, pp 24-54).
- (10) On January 4, 2012, Claimant underwent an evaluation by Cardiology. He had a stress test which was essentially unremarkable and a normal echocardiographic study. The echocardiogram report showed the left ventricular cavity size is normal with normal left ventricular function. The estimated left ventricular ejection fraction is 55-60%. There was normal left atrium volume index of 15cc/m² and trace pulmonic regurgitation. (Depart Ex. A, pp 10-16).
- (11) On January 13, 2012, Claimant underwent a medical examination on behalf of the department. Claimant was diagnosed with seizure disorder, depression and unspecified chest pain. The examining physician opined that Claimant's condition was stable. (Depart Ex. A, pp 3-4).
- (12) On February 13, 2012, Claimant was admitted for seizure disorder and angina. Claimant had a seizure last week and was brought to the emergency room, then discharged home, and again, the day before yesterday, he had a seizure at home, was brought to the emergency room and had several seizures in the ER. During the seizures, Claimant had a low glucose level at 62. Seizures were associated with urinary bladder

and bowel incontinence. He was diagnosed with seizure disorder with breakthrough seizures and a hypoglycemic episode. While in the hospital, he had a characteristic grand mal tonic clonic seizure. He was briefly postictal. He is compliant with anticonvulsant medication regimen by history. Seizure lasted several minutes. Claimant was discharged on February 16, 2012 in stable condition.

- (13) On February 26, 2012, Claimant was transported by ambulance to the emergency department after a seizure. Claimant had a witnessed seizure. Primary diagnosis was a grand mal seizure, headache, postictal syndrome, seizure disorder, and irritable bowel syndrome. He was released in stable condition.
- (14) On March 9, 2012, Claimant was transported to the emergency department after three consecutive seizures while seated in a restaurant. Immediately after the seizure he noticed mild chest pain coming from his sternum. This is a chronic problem which has resolved. There were 2-3 seizures lasting less than 30 seconds. He was discharged in improved condition.
- (15) On March 17, 2012, Claimant was transported to the emergency department after having seizures at home. Claimant was postictal. The attending nurse observed Claimant have a seizure and later the attending physician also witnessed Claimant having a seizure. He continued to have a prolonged postictal state and was admitted to the hospital with a diagnosis of multiple seizures with prolonged postictal state, breakthrough seizures, and hypoglycemia. The day after being admitted he started having seizures in the hospital which could not be controlled with any medication and he was intubated and transferred to the neurology intensive care unit on March 21, 2012.
- (16) On March 21, 2012, Claimant presented to the neurology intensive care unit, intubated for airway protection after having multiple seizure episodes in the hospital. He was extubated on March 23, 2012. He was on a continuous video EEG and reportedly had one seizure episode which was recorded as non-epileptic. He was reported to have whole body jerking with unresponsiveness lasting from seconds to about 90 seconds, usually with a few minutes of confusion after apparent recovery. His parents reported approximately 50 of these events at that point before admission. He was hypoglycemic on admission to the hospital, and after resolution of the hypoglycemia, the episodes continued. He was diagnosed with seizure and Chiari Malformation and discharged in good condition on March 25, 2012.
- (17) On April 11, 2012, Claimant was at his primary care physician's office when he had 3 witnessed seizures by office staff. The seizures lasted a total of 15 minutes. They were tonic-clonic in nature. He was transported by ambulance to the emergency department. Claimant had no memory of

events from the onset of the first seizure until he awoke in the ambulance. He was ambulatory and pain free at discharge. (Dept Ex. A, pp 325-356).

- (18) On April 30, 2012, Claimant was transported to the emergency department by ambulance. Per EMS, Claimant was in the bathroom at the mall and had a seizure. A CT head was normal. Claimant was discharged in stable condition. (Dept Ex. pp 357-389).
- (19) On July 21, 2012, Claimant was transported to the emergency room by ambulance. Claimant had a witnessed seizure lasting less than 5 minutes. He had a characteristic grand mal tonic clonic seizure and was briefly postictal. Claimant was diagnosed with seizure disorder, grand mal seizure and a headache. He was discharged in stable condition.
- (20) On August 27, 2012, Claimant arrived at the emergency room by ambulance. Claimant had three seizures today, one seizure at work, then one with EMS there, and one on the way to the hospital. He complains of a headache to the occipital area and left lower anterior leg numbness. His seizures lasted for several minutes. He had a characteristic grand mal tonic clonic seizure. He was diagnosed with a congenital seizure disorder. He had a poorly controlled seizure disorder with frequent seizure activity. He presents with mildly radicular symptoms in the left leg which is suggestive of a lumbar radiculopathy. Current symptoms were clearly related to seizure activity. He was diagnosed with seizure disorder, focal headache, and radiculopathy. He was discharged in stable condition.
- (21) On August 30, 2012, Claimant was transported to the emergency department by ambulance after multiple seizures. He had 5 or 6 seizures while in the emergency department and was admitted to ICU. He had a seizure while having an MRI. He was admitted to the hospital for recurrent episodes of alteration in consciousness, associated with and/or followed by seizure like activity including tonic and clonic activity. He was diagnosed with a right bundle branch block as well as Chiari malformation, which may be contributing to his current medical condition. Claimant was discharged on September 6, 2012 with a diagnosis of uncontrolled seizure disorder, Arnold-Chiari type 1 malformation, and incomplete right bundle branch block.
- (22) On September 15, 2012, Claimant was brought to the emergency department after 45 second seizure activity with postictal phase. He had a witnessed seizure. He had a characteristic grand mal tonic clonic seizure. He was diagnosed with seizure disorder and grand mal seizure. He was discharged in stable condition.
- (23) On September 25, 2012, Claimant was transported by ambulance to the emergency department for a seizure. He had a witnessed seizure. He had a characteristic grand mal tonic clonic seizure. He was briefly postictal. He was diagnosed with grand mal seizure, postictal syndrome,

idiopathic seizure disorder and cervical strain. He was discharged on September 25, 2012 in stable condition.

- (24) On October 14, 2012, Claimant was transported by ambulance to the emergency department having 2 seizures of approximately 40 seconds each. Claimant stated that he had a mild headache which was typical for him after a seizure. He had a glucose level of 85. He is on Dilantin and Depakote and denied missing any doses. He was diagnosed with breakthrough seizures, possibly due to infection. He was discharged in stable condition. (Dept Ex. pp 420-441).
- (25) On October 19, 2012, Claimant was transported by ambulance to the emergency department after a seizure. Claimant's mother stated Claimant had 9 seizures lasting 30 seconds in an hour period of time. The examining physician noted this was a chronic problem. He has poorly controlled seizure disorder with frequent seizure activity. He was discharged in stable condition.
- (26) On November 4, 2012, was transported to the emergency department after a seizure. The seizure lasted for several minutes. He had a characteristic grand mal tonic clonic seizure and was briefly postictal. He was diagnosed with postictal syndrome, grand mal seizure and seizure disorder. He was discharged in stable condition.
- (27) On November 10, 2012, Claimant was transported by ambulance to the emergency department after having three seizures that morning. He had a witnessed seizure. The seizures lasted for several minutes. He had a characteristic grand mal tonic clonic seizure. He was diagnosed with a congenital seizure disorder. He was briefly postictal. His discharge diagnosis was seizure disorder, hand injury, and grand mal seizure.
- (28) On November 11, 2012, was transported to the emergency department by ambulance after having 4 seizures in 30 minutes. While in the ER, Claimant had a grand mal seizure. He had a characteristic grand mal tonic clonic seizure. He has a poorly controlled seizure disorder with frequent seizure activity. He was diagnosed with moderate elevation of systolic BP, grand mal seizure, and seizure disorder. He was transferred to the medical center where his neurologist is and was admitted for observation.
- (29) On December 12, 2012, Claimant was brought to the emergency department by ambulance after a seizure. Claimant had four seizures that morning. He had a witnessed seizure. The seizure was prolonged but lasted less than 10 minutes. He had a characteristic grand mal tonic clonic seizure and was briefly postictal. He has a normal head CT. He was diagnosed with seizure disorder and headaches. He was discharged in stable condition.

- (30) On December 17, 2012, Claimant was transported to the emergency department after a seizure. He had a witnessed seizure. He had a characteristic grand mal tonic clonic seizure and was briefly postictal. He was diagnosed with a congenital seizure disorder. He has a poorly controlled seizure disorder with frequent seizure activity. He was also diagnosed with seizure disorder, irritable bowel syndrome, and grand mal seizure. He was discharged in improved condition.
- (31) On December 23, 2012, Claimant was taken to the emergency department after having three seizures that lasted approximately 25-30 minutes. He was postictal for longer than usual. The seizure status lasted for more than 10 minutes and really represented epilepticus. He had a prolonged postictal phase of mental confusion and lethargy. He was discharged in stable condition.
- (32) Claimant is a 23 year old man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 157 lbs. Claimant has a high school equivalent education.
- (33) 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).

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.

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 Facts #17-#32 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 11.04(B):

11.02 Epilepsy - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

Claimant testified that he is currently having continuous seizures several times a month with increasing frequency and duration as indicated by his medical records.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA programs. Consequently, the department's denial of his January 27, 2012, MA/Retro-MA 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 eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's January 27, 2012, MA/Retro-MA 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 March, 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: March 4, 2013

Date Mailed: March 5, 2013

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

