

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

IN THE MATTER OF:



Reg. No.: 2012-62507
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: October 4, 2012
County: Gladwin

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 October 4, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [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 February 16, 2012, Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
- (2) On June 15, 2012, 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 per 20 CFR 416.909.
- (3) On June 22, 2012, the department case worker sent Claimant notice that his application was denied.
- (4) On June 27, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On August 20, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform simple, unskilled, light work avoiding hazards, such as unprotected. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of chronic myoclonic epilepsy, anxiety, depression, arthritis, fatigue, migraines, left leg edema and chronic obstructive pulmonary disease.
- (7) On June 27, 2011, Claimant followed up with his neurologist. He stated he had 8 seizures last month. He feels the triggers are stress and anxiety. If he sees trauma or if someone yells too loud, he starts to go into a seizure. He sees an aura and has a "big jolt," electrical sensation through his lower extremities accompanied by jerking. Other times he has amnesia and tongue biting. He foams at the mouth and shakes all over for 1-6 minutes, then sleeps. It can take a week before he is finally back to normal. He is very tired and experiences post ictal psychosis and a decreased interest in eating. He has been diagnosed with head traumas and was physically abused by his father. EEG shows scarring in the brain. The MRI was normal. He was diagnosed with chronic myoclonic epilepsy. His neurologist opined that he is disabled due to the seizure frequency. (Department Exhibit A, p 103).
- (8) On July 18, 2011, Claimant underwent a medical examination by the Disability Determination Service. Claimant has had a history of seizures dating to age 12 when he had head trauma on two occasions. He currently is on Mysoline. Despite this medication which he states he is fearfully taking, he reports three to five generalized seizures a month in 2011, even more in 2010. His girlfriend attests to this accuracy. He stopped driving a car because of seizures five years ago. He does seem quite anxious. He is very frustrated with his situation. He has not been able to hold a job as a cook. He is under great financial duress. He is very pleasant and cooperative and did his best to provide a good history. (Department Exhibit A, pp 208-210).
- (9) On September 4, 2011, Claimant presented to the emergency department after having two seizures. He is trying to decrease alcohol use currently, so there is a question on whether these are alcohol withdrawal seizures or seizures related to his seizure disorder. He was admitted to the hospital for observation after having a grand mal type seizure in the emergency room. He also had another seizure his first night in the hospital. Personal hygiene was impaired and his memory functions are mildly impaired in

recent category. Deep tendon reflexes are decreased, but symmetrical.

Plantar reflexes are down going. His discharge diagnosis was alcohol abuse, COPD and seizure disorder. He was discharged on September 6, 2011 in stable condition. (Department Exhibit A, pp 122-154).

- (10) On December 12, 2011, Claimant saw his neurologist and was complaining of daily headaches since his last visit. Since June, 2011, he is still having 2-4 seizures a month, sometimes more. Claimant's neurologist opined that Claimant has epilepsy which is refractory to treatment, despite multiple drug trials. He is disabled due to his ongoing seizures. (Department Exhibit A, pp 19, 96).
- (11) On February 8, 2012, Claimant was admitted to the hospital with chronic obstructive pulmonary disease (COPD) and lingular pneumonia. His past medical history was positive for seizure disorder when he was 9 years old, alcoholism, depression and anxiety. He stated he had a couple of seizures yesterday. He has had a headache and is weak and lightheaded. He has a history of alcohol abuse. He says he quit 1 week ago and is involved in AA. X-rays of his abdomen raise the possibility of ileus. Chest x-rays revealed infiltrate/atelectasis in the lingual. Claimant was prescribed Cephalexin and Ibuprofen and instructed to continue Primidone. He was discharged in stable condition and instructed to follow up with his primary care physician in two weeks. (Department Exhibit A, pp 32-93).
- (12) On April 8, 2012, Claimant's neurologist opined that he has been treating Claimant for his chronic epilepsy. He has both epileptic and non-epileptic seizures. Both seizure types are involuntary and disabling. They have not responded well to medical treatment despite the trial of multiple seizure drugs. It can be difficult to distinguish between the two seizure types unless the patient can be monitored with a video and EEG while off medications. People with seizures can have normal EEG's between episodes, as is the case with Claimant. Claimant's seizures are unpredictable, but typically occur weekly and he is disabled for 2-3 days with fatigue and cognitive impairment. (Department Exhibit A, p 18).
- (13) Claimant is a 52 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 176 lbs. Claimant completed a high school equivalent education.
- (14) 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 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 and unpredictable seizures, 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 August, 2009; 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 the 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 cook 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 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 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 52, has a high school equivalent education and an unskilled work history), this Administrative Law Judge finds Claimant's MA, Retro/MA and SDA are approved using Vocational Rule 201.12 as a guide. Consequently, the

department's denial of his February 16, 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 February 16, 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.

It is SO ORDERED.

/s/

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

Date Signed: October 23, 2012

Date Mailed: October 23, 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.

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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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