

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-64391
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: October 17, 2012
County: Huron

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, a telephone hearing was commenced on October 17, 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) 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 May 29, 2012, Claimant applied for MA-P and Retro-MA.
- (2) On July 6, 2012, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA application indicating Claimant was capable of performing other work, pursuant to 20 CF R 416.920(f). SDA was denied due to lack of duration. (Department Exhibit A, pp 3-4).
- (3) On July 10, 2012, the department case worker sent Claimant notice that his application was denied.
- (4) On July 17, 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) upheld the denial of MA-P and Retro-MA indicating Claimant retains the capacity to perform light work. SDA was denied because the information in the file was inadequate to ascertain whether the claimant is or would be disabled for 90 days. (Department Exhibit B).
- (6) Claimant alleges disability based on a history of status post lumbar laminectomy, discectomy and foraminotomy on 9/17/08, degenerative disc disease and two herniated discs.
- (7) On April 6, 2011, Claimant saw his primary care provider complaining of lumbar pain radiating down his left leg with spasms in his buttocks. Claimant has difficulty ambulating because of the pain. He states that he has had two back surgeries. He also complains of anxiety. He was diagnosed with degeneration of the lumbar /lumbosacral disc. Claimant was referred to his neurosurgeon. (Department Exhibit B, pp 4-5).
- (8) On April 19, 2011, Claimant was evaluated by a neurosurgeon based on his complaint of left sciatica. Claimant underwent a second left L4-L5 lumbar laminotomy, discectomy, and foraminotomy on 9/17/2008. After that, he was doing reasonably well, but now he complains of pain which has been severe for the last two to three months. He states that he has been doing all sorts of work including roofing, lifting and twisting. He also complains of numbness and tingling. An EMG and MRI were ordered. (Department Exhibit B, p 3).
- (9) On July 18, 2011, Claimant was seen for a second opinion by another neurologist. This neurologist indicated that Claimant had previous surgeries in March of 2008 and subsequently in September of 2008 for a recurrent disc. Claimant had injured his back. After the first surgery, he did great. After the second surgery, he has had a little bit of chronic problems. About three months ago, Claimant had an acute flare-up with a lot of pain. Since then he has actually improved. He is almost back to baseline. He does have some discomfort in the left leg. It is particularly bad first thing in the morning especially with some left-sided back pain. The leg bothers him more if he has been up through the day. It radiates down to the left leg up to about the left calf. There is some tingling and numbness. No real weakness. He does get some cramps in the right side of the spine. Examination of his legs shows some restriction of straight leg raise on the left side to about 45 degrees secondary to some buttock pain. His gait is otherwise normal. He has had EMG studies which show some chronic changes at left L4-L5 and possibly S1. There is also some degeneration of disc on either side at L3-L4 and L5-S1. It appears that if he was to need surgery, he would need a big fusion and obviously, there

is a long recovery that is not 100% guaranteed. (Department Exhibit B, pp 8-9).

- (10) On January 20, 2012, Claimant saw his primary care physician for follow-up of his back pain. Claimant stated he had lumbar pain radiating down bilateral legs with left leg being the worst. He saw the neurosurgeon and had a nerve conduction study done. He was given Dilaudid and Cymbalta but does not like the effects. (Department Exhibit B, p 10).
- (11) On April 10, 2012, Claimant went to his primary care physician complaining of headaches and lumbar pain. Claimant stated he has intense headaches on a daily basis. They started after his last back surgery and are worsening, complaining of occipital and forehead pain, photophobia and emesis. Noise also makes the headache worse. He has constant pain from his lumbar spine which radiates down both legs. He has not been able to work due to the pain. He has stopped taking Cymbalta because he thought it was just making it worse. (Department Exhibit B, p 11).
- (12) On May 3, 2012, Claimant underwent a medical examination by his treating physician. Claimant is diagnosed with lumbar pain and lumbosacral disc degeneration. His left leg is clumsy and weak. He has had two prior lumbar spine surgeries. He needs to have an MRI done. The EMG results from 4/27/11 showed chronic findings. His treating physician opined that Claimant's condition is deteriorating. (Department Exhibit A, pp 15-16).
- (13) On October 1, 2012, Claimant was evaluated at the spine program at the University of Michigan regarding low back pain with left leg pain. Ten systems were reviewed and are positive for diffuse weakness in his arms and legs, headaches, oral sores, difficulty hearing, jaw pain, worse pain with coughing or sneezing, anxiety, panic attacks, lost interest in things he enjoys doing and a low level of energy. There is an increased thoracic kyphosis. MRI lumbar spine images revealed paraspinal atrophy noted on the left. Hemilaminectomy changes, epidural fibrosis encroaching on the left L5 nerve root, disc bulging, facet arthropathy and severe disc and endplate degeneration in the lower lumbar spine. The EMG showed chronic at L4-L5 and L5-S1 root distribution greater on the left versus right. He was diagnosed with lumbar radicular pain with disc herniation, degeneration and spondylosis on imaging. (Claimant Exhibit A, pp 1-5).
- (14) Claimant is a 44 year old man whose birthday is [REDACTED] Claimant is 5'7" tall and weighs 140 lbs. Claimant completed high school and last worked in September, 2011.

- (15) Claimant was appealing the denial for Social Security disability 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 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.

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).

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 Fact #6-#14 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 spinal impairments meet or equal Listing 1.04(A) and 1.04(C):

1.04 *Disorders of the Spine* (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine).

AND

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on an appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

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 29, 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 November, 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: November 1, 2012

Date Mailed: November 2, 2012

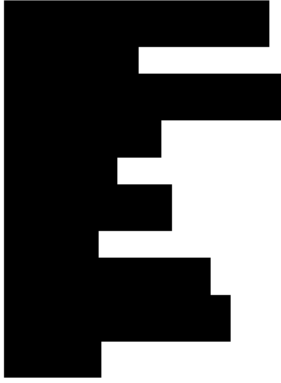
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

2012-64391/VLA

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/las

cc:

A large black rectangular redaction box covering several lines of text in the cc field.