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

IN THE MATTER OF:



Reg. No.: Issue No.: Case No.: Hearing Date: County: 2012-71684 2009

November 21, 2012 St. Clair

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, whic h govern the administrative hear ing and appeal proces s. A fter due notice, a telephone hearing was commenced on Nove mber 21, 2012, from Lansing, Michigan. Claimant personally appeared and test ified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist

ISSUE

Did the Department of Human Services (DHS) properly deny Claimant 's Medic al Assistance (MA-P) and Retro-MA application?

FINDINGS OF FACT

The Administrative Law Judge, based upon t he competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On May 10, 2012, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On July 26, 2012, the Medical Re view T eam (MRT) denied Claimant's application for MA-P/Retro-MA in dicating Claimant was capable of performing other work, pursuant to 20 CFR 416.920(f). (Department Exhibit A, pp 1-2).
- (3) On August 2, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On August 13, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 5, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacit y to perform a wide range of light work. (Department Exhibit B).

- (6) Claimant is a 50 y ear old m an w hose birthday is Claimant is 6'2" tall and weighs 203 lb s. Claimant grad uated from high school.
- (7) Claimant had applied for Social Security disability benefits at the time of the hearing.
- (8) Claimant does not have a nicotine/alcohol/drug problem.
- (9) Claimant testified that he has a driv er's license and is able to drive short distances.
- (10) Claimant last worked full-time in 1985. He had a temporary job for one month in 2002 as a welder's helper, but was let go because he was unable to keep up.
- (11) Claimant alleges disability on the basis of multiple impairments. Claimant has a history of left knee derangement, osteoarthritis, shoulder injury, headaches, insomnia, restless leg syndrome, lumbago, radiculopathy, and degenerative disc disease.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Subchapter XIX of Chapter 7 of The Public Health & Welfar e Act, 42 USC 1397, and is adminis tered by the Department, (DHS or department), pur suant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Adminis trative Manual (BAM), the Brid ges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 expect ed to last for a continuous period of not less than 12 months. 20 CFR 416. 905(a). The person claimi ng a physical or mental disability has the burden to establis h it through the u se of competent medical evid ence from gualified medic al sources s uch as his or her m edical history, clinic al/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and ma ke appropriate mental adjustments, i f a mental disab ility is alleged. 20 CRF 41 3.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disab ility. 20 CFR 416.908; 20 CFR 41 6.929(a). Similarly, conclusor y statements by a physician or m ental health professional that an individual is disabled or blind, absent supporting medical evidence, is in sufficient to establish disability. 20 CFR 416.927.

When determining disability, t he federal regulations require s everal 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 th e applic ant 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 app licant's pain on his or her ability to do basic

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work activities. 20 CFR 416.929(c)(3). The applic ant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of t he objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulat ions require a five-step sequential evaluation process be utilized. 2 0 CFR 416.920(a)(1). The fivestep analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in dur ation and whether it me ets or equals a liste d impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work ; and residual f unctional capacity along with vocation al factors (e.g., age, education, and work exper ience) to determine if an individual c an adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

- 1. If you are working and the work you are doing is substantial gainful act ivity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
- 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 416.909(c).
- 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 s pecified for the listed impairment that meets the duration require ment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
- 4. Can the client do the forme r work that he/she performed within the last 15 years? If yes, t he client is ineligible for MA. If no, the analys is c ontinues to Step 5. Sections 200.00-204.00(f)?
- 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? This step considers the residual functional capacity, age, education, and past work experience t o see if the clien t can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

If an individual is found disabled, or not disabled, at any step, a determination or decision quent steps. 20 CF R 416.920(a)(4). If a is made with no need to evaluate subse determination cannot be made t hat an individual is disabled, or not disabled, at а particular step, the next step is required. 20 CFR 416.920 (a)(4). If an impairment does not meet or equal a listed impairment, an indi vidual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual f unctional c apacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An indivi dual's residual functional capacity assessment is evaluat ed at both St eps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will n ot be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416. 912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

Federal regulations are very specific regarding the type of medical evidence required by Claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate Claim ant's claims or Claimant's physicians' statements regarding disability. These regulations state in part:

Medical reports should include:

- (1) Medical history.
- (2) Clinical findings (suc h as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of di sease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish t hat you are disabled; there must be medical signs and labor atory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d). Medical findings c onsist of symptoms, signs, and laboratory findings:

- (a) **Sy mptoms** are your own des cription of your phy sical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, phys iological, or psychologic al abnormalities whic h can be obs erved, apart from your

statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable e phenomena which in dicate specific ps ychological abnormali ties e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must all so be shown by observable facts that can be medically described and evaluated.

(c) Laboratory findings are anatomical, physiologic al, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techni ques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

The medical findings must allow us to determine:

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 41 6.913(e). You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death, or which has lasted or can be expected to last for a cont inuous period of not less than 12 months. See 20 CF R 416.905. Your impa irment must result from anatomical, phy siological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not inelig ible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analys is looks at whet her an individual meets or equals one of the Listings of Impairments. 20 CFR 416. 920(d). C laimant does not. The analy sis continues.

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The fourth step of the ana lysis looks at t he ab ility of the applicant to return to pas t relevant work. This step ex amines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that Claimant has not worked since 1985. Therefore, the analysis continues to Step 5.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administ rative Law Judge finds that Claimant meets statutory disability on the basis of Medical/Vocation Grid Rule 201.14 as a guide.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s 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:

Vicki

Administrative

- 1. The depart ment shall process Cla imant's May 10, 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 financ ial and non-financ ial eligibility factors.
- 2. The department shall rev iew Claimant's medica I cond ition for improvement in February, 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/

L. Armstrong Law Judge For Maura D. Corrigan, Director Department of Human Services

Date Signed: February 11, 2013

Date Mailed: February 11, 2013

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or

reconsideration on the Department's mo tion where the final decis ion 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 mailing date of the rehearing decision.

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

- A rehearing <u>MAY</u> 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 erro r, 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

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