

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-30534
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 22, 2012
County: Ingham

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 May 22, 2012, from Lansing, Michigan. Claimant, represented by [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Lead Worker [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 September 11, 2012, 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 June 3, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On November 4, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant was capable of performing other work, pursuant to 20 CFR 416.920(f).

- (3) On November 8, 2011, the department sent notice to Claimant that his application for Medicaid had been denied.
- (4) On February 2, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On March 20, 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 light unskilled work. (Department Exhibit B, pp 1-2).
- (6) On September 11, 2012, the SHRT reviewed the newly submitted evidence and upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform light exertional tasks of a simple and repetitive nature. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of hypertension, coronary artery disease, gastroesophageal reflux disease (GERD), pulmonary embolism, chronic obstructive pulmonary disease (COPD) and depression.
- (8) On March 9, 2011, Claimant went to the emergency department complaining of chest pain. Based on the results of his EKG, he underwent a left heart catheterization, coronary angiography, left ventriculography, PCI and stenting of the mid-circumflex. The multiple angiographic views revealed an acute myocardial infarction due to a total occlusion of the mid-circumflex. He underwent successful primary angioplasty and stenting. Diffuse moderate disease in the LAD. Chronic total occlusion of the proximal right coronary artery at the site of previously implanted stent with well developed collaterals (both right to right and left to right). He also had a mildly depressed left ventricular systolic function. (Department Exhibit A, pp 44-46).
- (9) On March 24, 2011, Claimant presented to the emergency department with chest pain and shortness of breath. A CT showed right mid lobe pulmonary artery branch with bibasilar consolidations. He was admitted for right pulmonary embolism and a hypercoagulable workup was started. He had experienced chest pain likely secondary to pulmonary infarct and pleuritic chest pain from the pulmonary embolism. He was discharged on March 28, 2011 and had improved chest pain with the chest x-ray showing improved bibasilar area infiltrates. (Department Exhibit A, pp 47-50).
- (10) On April 15, 2012, Claimant presented to the emergency department with chest pains. He also had mild diaphoresis. An EKG showed acute ST elevations in the anterolateral leads, and an acute cardiac alert was called and he was transported to the cardiac catheterization lab for emergent procedure. (Claimant Exhibit A, pp 1-3).

- (11) On May 30, 2011, Claimant went to the emergency department complaining of chest pain. Claimant had a known history of coronary heart disease with the last intervention in March, 2011, having undergone a drug-eluting stent to the mid circumflex artery. He was subsequently admitted at the end of March and was diagnosed with a pulmonary embolism. His cardiac catheterization from March 25, 2011 had demonstrated total occlusion of the mid circumflex artery and he underwent successful primary angioplasty and stenting of the vessel, and diffuse moderate disease in the LAD, chronic total occlusion in the proximal right coronary artery at the site of the previously implanted stent with well-developed collaterals. The stent had placed in 2009. He had mildly depressed left ventricular systolic function. His estimated ejection fraction was approximately 40%. (Department Exhibit A, pp 30-34).
- (12) On July 21, 2011, Claimant was evaluated by his cardiologist. The treadmill was negative at 85% and the echocardiogram showed preserved left ventricle function with no evidence of clot or other abnormality. There was some mild inferior wall hypokinesia that went along with his small inferior wall infarction. His blood pressure was 106/76 and he was on appropriate medication. The cardiologist saw no reason for Claimant to continue the Coumadin and told Claimant he could stop taking the Coumadin. (Claimant Exhibit A, p 15).
- (13) On August 1, 2011, Claimant underwent a psychological evaluation by the Disability Determination Service. The examining psychologist opined that his abilities to understand, remember and carry out simple instructions appeared moderately impacted. His abilities to respond to others appropriately, including co-workers and supervisors, and adapt to changes in a work setting, appeared moderately impacted. His abilities to perform work related activities in a reliable, consistent, and persistent manner, in spite of alleged impairments did not seem severely impacted from a psychological standpoint. Workability secondary to residuals of heart disease would need to be determined physically. Diagnosis : Axis I: Depression; Axis III: Reports heart attack at age 44 and again this year with stents in place and continued weakness, lack of motivation, easy fatigue and shortness of breath. Also reports heart disease, high blood pressure and COPD. He said that the COPD, cholesterol and blood pressure issues were controlled by medication. Axis IV: Psychosocial stressors accompanying health decline, unemployment, living with parents for past decade, lack of goals and purpose. Axis V: GAF=55. Prognosis is guarded. (Department Exhibit A, pp 35-41).
- (14) On August 23, 2011, Claimant underwent a medical examination by the Disability Determination Service. Claimant was hospitalized in 2009 for his first acute myocardial infarction and again in May, 2011 for his second

acute myocardial infarction. He has infrequent angina easily relieved with Nitrostat. He does have episodic palpitations which he attempts to relieve by behavior modification. Pulmonary emboli occurred following his acute myocardial infarction in May, 2011. He was on Coumadin following the diagnosis. He is no longer on Coumadin. He is no longer symptomatic. (Department Exhibit A, pp 25-34).

- (15) On April 15, 2012, Claimant underwent an echocardiogram which showed moderate left ventricular hypertrophy, mild mitral regurgitation, trace tricuspid regurgitation and a left ventricle ejection fraction between 55 to 60%. (Department Exhibit C, p 3).
- (16) On July 26, 2012, Claimant went to the emergency department complaining of chest pain. He has a history of a myocardial infarction and percutaneous coronary intervention to the left circumflex coronary artery in March, 2011 with subsequent late stent thrombosis secondary to thienopyridine noncompliance on April 15, 2012. He also has a history of pulmonary embolism, not on Coumadin. This was diagnosed in 2011. He is unsure if anyone has told him to stop his Coumadin or if he just stopped taking his Coumadin. He was diagnosed with unstable angina and he was scheduled for diagnostic cardiac catheterization with history of recent stent thrombosis in April, 2012 with continued medical noncompliance, hypertension and dyslipidemia. (Department Exhibit C, pp 3-6).
- (17) Claimant is a 48 year old man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 161 lbs. Claimant graduated from high school and completed a year of college. He last worked in March, 2011.
- (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 (RTM).

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 chest pain, shortness of breath 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 2008; 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 clerk are 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 extensive 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) . 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 numbers 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 June 3, 2011 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 June 3, 2011 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 September, 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: September 24, 2012

Date Mailed: September 25, 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.

2012-30534/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.

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