

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

IN THE MATTER OF:



Reg. No.: 2012-41899
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 13, 2012
County: Macomb

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on June 13, 2012. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA?

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 October 20, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On February 23, 2012, 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 March 5, 2012, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On March 23, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 7, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating that Claimant retained

the capacity to perform a wide range of simple, unskilled, light work. (Department Exhibit B, pp 1-2).

- (6) Claimant has a history of bipolar disorder, manic depression with violent tendencies, degenerative discs and herniated discs in his back and neck, attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD).
- (7) On January 13, 2011, Claimant's cervical MRI showed degenerative changes in the cervical spine to include straightening of the normal lordotic curvature suggesting muscle spasm. Disc herniations were seen at all disc levels from C2-C7, with borderline spinal stenosis at the C6-C7 disc level and probably impingement upon the right nerve root at the C3-C4 disc level. There was also impingement upon the neural foramen from C3-C7. (Department Exhibit A, pp 46-47).
- (8) On June 17, 2011, Claimant underwent a psychological evaluation on behalf of the Michigan Disability Service. Claimant was noted to have a history of bipolar disorder, most likely since birth. He experiences emotional lability ranging from severe depression to mania (rage). Claimant has a very short temper, argues easily, and has low frustration tolerance. He is poorly motivated. He has occasional auditory hallucinations, occasional suicidal ideations, and some paranoia. Prognosis was fair, and he was referred to a neurologist for his memory. GAF=45. (Department Exhibit A, pp 24-29).
- (9) On June 21, 2011, Claimant's doctor evaluated Claimant's ability to do work-related physical activities. His doctor found Claimant could lift less than 10 pounds frequently, stand/walk for 1 to 2 hours, sit for 8 hours alternative sitting and standing every hour and had a limited upper extremity capacity for pushing and pulling, based on his back pain, degenerative joint disease and herniated cervical discs. His doctor also restricted Claimant from ever kneeling, crouching, or climbing, and that he would be limited in his abilities to reach and handle. Claimant also had difficulty squatting, getting on and off the examining table and adiaochokineses. (Department Exhibit A, pp 50-54).
- (10) On September 28, 2011, Claimant was evaluated by a neurologist. He has neck pain which radiates into both upper arms, the left greater than the right. His pain is intermittent and described as sharp, achy, and burning. He has pain in both arms on a daily basis. His symptoms are worse with prolonged sitting. The MRI of his cervical spine from January, 2011, showed a small disc herniation toward the right C3-C4, a disc bulge with broad based disc herniation at C4-C5, disc bulging and broad disc herniation at C5-C6, and disc herniation at C6-C7. There was borderline spinal stenosis at the C6-C7 level. The MRI of his lumbar spine revealed

a disc bulge at L2-L3, and L3-L4, also arthritis at L3-L4, a broad central disc protrusion and arthritis at L4-L5 (causing mild central canal and foraminal stenosis). Degenerative disc disease was seen from L2-L5. The 2008 x-ray of his lumbar spine showed degenerative disc disease and arthritis. Sensory examination to pinprick was diminished in his right hand and right anterolateral thigh. Straight leg raise to 90 degrees on the right side was positive. He had pain on palpation of his neck muscles, lower lumbar spine, bilateral sacroiliac joints, and bilateral lumbar paraspinal muscles. He had a questionably positive Romberg and his balance was affected by this maneuver. He had much difficulty walking on his heels and toes, complaining of balance problems. He also has tremors in both upper extremities. The tremors cause difficulty with writing and when eating. He is forgetful and easily distracted. He is unable to manage his bills. (Department Exhibit A, pp 30-32).

- (11) On October 31, 2011, Claimant was evaluated by his psychologist. She noted Claimant had been in treatment since October 2008, and his response was moderately effective with a fair prognosis since he can no longer afford to take Seroquel. She anticipated Claimant would miss more than four days a month of work based on his impairments and treatment.
- (12) On January 10, 2012, Claimant underwent a psychiatric examination on behalf of the department. Claimant walked with a steady gait, rather fast, and he maintained his equilibrium during ambulation. His gait was steady and there was no sign of abnormal posture or mannerisms. He appeared somewhat anxious and tense, autonomous, and a motivational to seek employment. His insight appeared impaired as he continued to smoke cannabis off and on for its medicinal purposes and he believed it alleviated his back pain. He appeared excitable, and had difficulty remaining focused and presented an attenuated attention span. Diagnoses: Axis I: Attention deficit disorder (ADD), Bipolar disorder, Chronic cannabis abuse; Axis II: Personality disorder (sharing some features of dependent personality trait, some features of antisocial personality trait); Axis III: Herniated disc L2 through L5; Axis IV: Long history of mental illness; Axis V: GAF=40. Prognosis was fair to guarded with treatment. (Department Exhibit A, pp 5-9).
- (13) Claimant is a 44 year old man whose birthday is [REDACTED]. Claimant is 6'0" tall and weighs 210 lbs. Claimant completed a high school equivalent education. Claimant last worked in 2007 as an electrician in an apprentice program.
- (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 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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 #7-#13 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 1.04:

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 equina) or the spinal cord. With:

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

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his October 20, 2011, 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 October 20, 2011, 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 June, 2013, 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: 6/29/12

Date Mailed: 6/29/12

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.

VLA/ds

■ [REDACTED]