

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

IN THE MATTER OF:



Reg. No.: 2012-4327
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 12, 2012
County: Calhoun

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, an in-person hearing was held on January 12, 2012. Claimant, represented by [REDACTED], personally appeared and testified.

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 April 24, 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?

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 26, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On July 1, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA indicating that Claimant's physical impairments will not prevent employment for at least 12 consecutive months.

- (3) On July 11, 2011, the department sent out notice to Claimant that his application for MA/Retro-MA had been denied.
- (4) On October 7, 2011, Claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On December 2, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating the medical evidence of record indicates Claimant's condition is improving or expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA/Retro-MA is denied due to lack of duration pursuant to 20 CFR 416.909. (Department Exhibit B, pp 1-2).
- (6) On April 24, 2012, the SHRT upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform a wide range of at least sedentary work. Therefore, based on Claimant's vocational profile (younger individual, 13 years of education and a history of skilled work), MA-P is denied using Vocational Rule 201-21 as a guide. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of chronic peripheral venostasis, a heart condition, chronic obstructive pulmonary disease (COPD), pulmonary emboli, and hypertension.
- (8) On February 23, 2011, Claimant was admitted to the hospital from the emergency department. He presented with bilateral leg wounds at the clinic, and was noted to have tachycardia and sent to the emergency department. Claimant admitted that his shortness of breath was no different than usual. He was found to have lower extremity edema and tenderness of his vascular lesions of his lower extremities. He underwent an EKG, which demonstrated atrial fibrillation with a rapid ventricular response. He underwent BNP, which were 2,830. CPK-MB was 0.96. Chest x-ray was negative. CT scan demonstrated multiple pulmonary emboli. Cardiology felt that the basis of Claimant's atrial fibrillation was pulmonary embolism and COPD and probably underlying pulmonary artery hypertension, although his echocardiogram failed to demonstrate that. His history also suggested the presence of obstructive sleep apnea syndrome, which will be evaluated in the future. He is presently being treated with Lovenox and Coumadin. Consideration has been raised regarding an inferior vena cava filter, given Claimant's apparent chronic peripheral venostasis and multiple emboli likely from a peripheral source. Claimant has a limited echocardiogram already. Ejection fraction is in the range of 50%. Claimant appears likely at high risk of future thromboembolism. Beta-blocker and digitalis are most appropriate for rate control of atrial embolism. Discharge diagnosis: Atrial fibrillation, new

onset; Acute pulmonary emboli; Chronic obstructive pulmonary disease; Bilateral lower extremity venous insufficiency with vascular ulcers; history of tobacco abuse; Clinical impression of obstructive sleep apnea syndrome; Notwithstanding the results of the echocardiogram, Claimant was felt to have secondary pulmonary artery hypertension; Exogenous obesity. Claimant was discharged on March 3, 2011 with the following medications: Lopressor, Digoxin, Coumadin, Protime with INR on 3/4/11. Levaquin, Neruontin, Avair, and Sprivia with instructions to follow-up with his primary care physician at the clinic and the he will require a polysomnography. (Department Exhibit A, pp 122-134).

- (9) On March 31, Claimant went to the clinic for follow-up of his hospital discharge for atrial fibrillation. His heart rate was irregular, but his lungs were clear bilaterally. He had no shortness of breath, and no chest pain. His bilateral leg wounds were healing. (Claimant Exhibit A, p 7).
- (10) On April 21, 2011, Claimant went to the clinic complaining of shortness of breath on exertion, and that he was aware of his irregular heart beat at times. His chest was clear, heart regular and his wounds were healing. He had a little edema in his left leg. (Claimant Exhibit A, p 7).
- (11) On July 28, 2011, Claimant went to the clinic complaining over shortness of breath. Claimant had a speeding heart rate, without palpitations. His prescribed breathing treatments gave him short lived relief. His main limitation for activities is his shortness of breath. (Claimant Exhibit A, p 5).
- (12) On November 17, 2011, Claimant went to the clinic complaining of bilateral calf pain and chest discomfort, partially relieved with rest. Radial pulses were non-palpable. INR 2.9. The examining physician tried to schedule Claimant for an EKG with outside doctor, either the machines were down, or the offices were closed. Peripheral artery disease suspected, referred to vascular surgeon. (Claimant Exhibit A, pp 4, 10).
- (13) On November 25, 2011, an ultrasound of Claimant's lower extremity arterial Doppler multi level bilateral showed no significant flow limiting disease. (Claimant Exhibit A, p 1).
- (14) On December 29, 2011, Claimant saw his primary physician for follow-up of his COPD. He complained of shortness of breath on exertion. Patient's INR completed and faxed to his cardiologist. (Claimant Exhibit A, p 12).
- (15) Claimant is a 47 year old man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 260 lbs. Claimant completed high school and a year of college.

- (16) 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).

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 leg pain and edema, 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 February 2011; 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 mechanic 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 May 26, 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 May 26, 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 May, 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: 5/7/12

Date Mailed: 5/7/12

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]