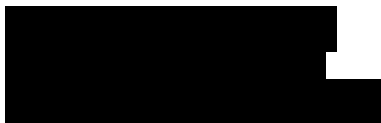


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-58357
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 28, 2012
County: Eaton

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the 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 August 28, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

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 April 10, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On May 21, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that he has a non severe impairment, 20 CFR 416.920 (c).
- (3) On May 24, 2012, the department case worker sent Claimant notice that his application was denied.
- (4) On June 12, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 20, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and the evidence or record did not document a mental/physical impairment(s) that significantly limits Claimant's ability to perform basic work activities. (Department Exhibit B, pp 1).
- (6) Claimant has a history of lymphatic disease.
- (7) Claimant is a 32 year old man whose birthday is [REDACTED]. Claimant is 6'3" tall and weighs 245 lbs. Claimant has a high school equivalent education and is currently enrolled in college.
- (8) Claimant has applied for Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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).

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(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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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 limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process to be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a 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 individual'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 functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 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 not 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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he has not worked since June 15, 2010. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental

ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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.
Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to lymphatic disease.

On May 19, 2011, Claimant presented to the emergency department with an injury to his left knee, left ankle and left foot. His foot and knee were swollen and Claimant had numbness, tingling, trouble walking and weakness. He was ambulatory and in no acute distress. He had pain with weight bearing. He had tenderness and a small abrasion on his left knee and tenderness and swelling of his left ankle. His range of motion was limited, secondary to pain. He was diagnosed with lower extremity pain, left pedal edema and a sprained left knee. He was directed to apply ice intermittently and wear an elastic wrap as instructed. He was prescribed Vicodin and Naproxen and discharged.

On May 28, 2011, Claimant presented to the emergency department complaining of left knee pain. He had been to the ED on 5/19/11 for the same injury and was prescribed Vicodin and Naproxen. He appeared to be in no acute distress. There was mild tenderness in the medial joint line of the left knee. No limitation in range of motion. His ankle was stable and he had a limping gait. He was diagnosed with a sprained knee. An immobilizer was applied to his left knee and he was fitted with crutches and instructed to follow up with his primary care physician and discharged.

On June 16, 2011, Claimant saw his primary care physician and reported he injured his left leg on 5/19/11, when he lost his balance and fell. He still has pain and swelling. X-rays of his left knee and ankle were negative for fractures. A left lower extremity ultrasound revealed no evidence of deep vein thrombosis. He was diagnosed with a sprained left knee and prescribed Vicodin. An ace bandage was applied to the left knee and he was advised he may walk and bear weight as tolerated. He was prescribed Ibuprofen and Ultram and left the emergency department on crutches.

On June 27, 2011, Claimant went to the emergency department presenting with mid sternal chest pain and night sweats. He appeared anxious and in pain. His heart rate and rhythm were normal and he was not in respiratory distress. EKG was normal. A CTA was run for pulmonary embolus and was negative. Chest x-rays showed no acute pulmonary parenchymal process. He was diagnosed with chest wall pain, prescribed Vicodin and discharged in stable condition.

On June 30, 2011, an MRI without contrast of Claimant's left knee revealed no internal derangement identified. The joint fluid volume was at the upper limits of normal and he had minimal prepatellar edema.

On September 27, 2011, Claimant presented at the emergency department with a cough, sore throat and vomiting. He also had a long term problem with his leg that he wanted the doctor to help him with. Claimant was ambulatory to the room and did not appear to be in acute distress. Respirations were non-labored. He was given Albuterol. Chest x-rays revealed no acute disease. Lungs were clear. Strep test was negative. He was diagnosed with an acute cough and probable acute bronchitis. Claimant was discharged in improved and stable condition. He was prescribed Doxycycline and given instructions on how to use the nebulizer, how to alternate Tylenol and Motrin and counseled to stop smoking.

On October 13, 2011, Claimant presented to the emergency department with bronchitis. He was prescribed Levaquin and discharged.

On December 9, 2011, Claimant presented to the emergency room stating that the doctor was supposed to be removing skin tags from his back. He also complained of left leg pain down into his knee and pain in his back. He was discharged with a prescription for Flexeril.

On December 23, 2012, Claimant presented to the emergency department for a follow-up on his mole removal site. He stated it was itchy. He also complained of back pain. He was prescribed Flexeril and discharged.

On January 30, 2012, Claimant went to the emergency department with an injury to his right wrist. He appeared in no acute distress. Extremities exhibited normal range of motion. He had a new onset of numbness in his right hand. He had tenderness in his right wrist and his fingers were possibly swollen. X-rays showed no fracture or dislocation. He was diagnosed with a sprain and a Velcro upper extremity brace was applied to his right wrist. At discharge, he was improved and stable and prescribed Ibuprofen.

On February 3, 2012, Claimant presented to the emergency department with a sprained wrist. He stated it started five days ago and his hand goes numb. He also has back and leg pain.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that he has lymphatic disease. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 16, 2012

Date Mailed: October 16, 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.

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.

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