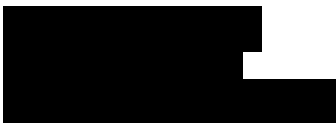


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-64393
Issue No.: 2009
Case No.:
Hearing Date: October 11, 2012
County: Berrien

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 October 11, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payment Supervisor

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 January 4, 2013, 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 May 4, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On June 15, 2012, the Medical Review Team (MRT) approved Claimant's application for SDA. MRT denied Claimant's application for MA-P and Retro-MA for lack of duration. (Department Exhibit A, pp 1-2).

- (3) On June 20, 2012, the department sent notice to Claimant that his application for Medicaid had been denied.
- (4) On July 10, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 24, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits due to lack of duration. (Department Exhibit B, pp 1-2).
- (6) On January 4, 2013, 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 that avoids the use of ropes, ladders, scaffolding and more than concentrated exposure to unprotected heights and dangerous machinery. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of depression, posttraumatic stress disorder, arthritis, nerve damage, seizures, broken neck, hepatitis C and asthma.
- (8) Claimant is a 40 year old man whose birthday is [REDACTED] Claimant is 6'0" tall and weighs 172 lbs. Claimant has a high school equivalent education and last worked in 2004.
- (9) 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 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 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 2004. 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 916.920(a)(4)(ii); 20 CFR 916.920(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 depression, posttraumatic stress disorder, arthritis, nerve damage, seizures, broken neck, hepatitis C and asthma.

On May 3, 2012, Claimant was transported to the emergency department by ambulance complaining of having had a seizure. He stated he got out of prison yesterday and last had a seizure 8 years ago. He also reported recently completing infusions which he received for 6 months due to his hepatitis C. A CT of the head without contrast revealed no acute intracranial abnormality. EKG sinus tach was 105 bpm. After a consultation, this was deemed a side effect of Claimant's taking 6 Ultram that morning. Claimant was instructed not to take Ultram or alcohol and Claimant was discharged.

On May 27, 2012, Claimant arrived at the emergency department by ambulance complaining of back pain. Claimant reported he had been drinking and missed a stair and fell down 2 flights of stairs. He was diagnosed with multiple fractures of ribs of both sides, a clavicle fracture, a scapula fracture and multiple transverse fractures of L1, L2, and L3. Claimant had some discomfort and hyperaesthesia over low back. Claimant was discharged with prescriptions for Vicodin and Valium.

On June 6, 2012, Claimant established care with his primary care physician. Claimant reported he has had mild seizures for about 10 years and has not been on medication. He stated he has had 3 bad seizures in the past year and a half. Claimant reported he had a seizure three weeks ago, and then another two weeks ago where he fell off a balcony and down three stories. He was taking Neurontin for back pain. He stated his prescription ran out and he began having seizures and has continued to have seizures since. He appeared to be in pain with movement. He exhibited tenderness over the right scapula, pain and spasm. He had decreased range of motion, tenderness, right more than left diffusely, pain and spasm in the lumbar back. Right ribs diffusely tender with no ecchymosis. He was alert, his behavior was normal but he was easily tearful.

On July 11, 2012, Claimant saw his physician for follow-up on his fractures. Claimant stated he thinks it is getting better, but then it goes downhill again. It had been 5 weeks since his fall. He continued to have upper back pain, bilateral shoulder pain, and right side and clavicle pain. He also had some numbness right lower anterior chest. He has had no further seizures since taking Neurontin.

On August 17, 2012, Claimant saw his physician to follow-up on his anxiety. Claimant thought his anxiety was better. He also felt that his left shoulder pain, right clavicle pain, and scapular pain were getting significantly better, but he fell again. He reported falling down 6 days ago with a seizure. He stated he was not taking his Neurontin regularly due to the cost and when he was taking Gabapentin regularly, it controlled his seizures. He was taking Diazepam only occasionally. He exhibited decreased range of motion, tenderness and pain in both his shoulders and lumbar back. He also exhibited tenderness over the right scapular and upper back bilateral right, more than left, with pain and spasm. His right clavicle was mildly tender with proximal deformity. The right ribs were diffusely tender, but less tender than on previous exams. The plan was to wean him off the Vicodin and Diazepam and continue range of motion exercises for his shoulders and refer him to a neurologist if the seizures were not well controlled on Gabapentin.

On September 6, 2012, Claimant underwent a psychological evaluation by the [REDACTED]. Claimant stated he had sciatic nerve damage in his lower back, seizures, limited movement of his right shoulder, asthma and hepatitis. Claimant was cooperative throughout the evaluation. Claimant stated he limped because of his sciatic nerve. It shoots down his left leg and into his big toe. The examining psychologist opined that Claimant is capable of understanding, remembering and carrying out instructions and making decisions regarding work related matters. Claimant denied any history of interpersonal problems in the workplace. He cited chronic health problems as

his primary obstacle to employment. Diagnoses: Axis I: History of Drug and Alcohol Abuse; Adjustment Disorder with Depressed Mood; Axis III: Sciatic nerve damage; Seizure disorder; History of right shoulder injury with continuing limited movement; History of motor vehicle accident with broken neck; Asthma; Hepatitis C; Recent weight loss (by report); Axis V: GAF=57. Prognosis was guarded.

On September 13, 2012, Claimant underwent a medical examination by the [REDACTED] [REDACTED]. X-rays of the lumbosacral revealed normal lordosis of lumbar spine with no subluxation, no compression deformities and mild spondylosis. The musculoskeletal exam revealed Claimant's dexterity was unimpaired. He had no difficulty getting on and off the examination table, no difficulty in walking on his right heel and toes, mild difficulty walking on his left heel and toes, mild difficulty squatting and arising, no difficulty balancing on the right, mild difficulty balancing on the left, and mild difficulty performing the tandem walk. The examining physician noted that it was unclear whether Claimant gave his best effort with the formal range of motion testing. The physician concluded that Claimant likely had an element of degenerative disc disease present in that he complained of back pain with straight leg raising, which was associated with a radiating pain moving down the left leg, which appeared to be of longstanding duration. He avoided certain positions and activities as a result of his pain. He did not require the use of an assistive device to safely ambulate.

On October 3, 2012, Claimant went to the emergency room complaining of back pain. Claimant was out of Neurontin and Vicodin and was in the process of being referred to the pain management clinic by his primary care physician. The pain was present in the sacroiliac joint. The musculoskeletal exam was positive for back pain and negative for gait problem. He had normal range of motion. He exhibited tenderness, pain and spasm in his lumbar back. No edema. He was diagnosed with chronic pain exacerbation and was improved with treatment in the emergency department and was discharged in good condition with a prescription for Vicodin.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical disabling impairments due to depression, posttraumatic stress disorder, arthritis, nerve damage, seizures, broken neck, hepatitis C and asthma.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 11.00 (neurological), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant's prior work history consists of work as a laborer and fork lift operator. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, medium work.

Claimant testified that he is able to walk short distances and can lift/carry approximately 10 pounds. The objective medical evidence notes no limitations. If the impairment or combination of impairments does not limit an individual's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, Claimant cannot be found able to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, Claimant was 40 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school equivalent education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from depression, posttraumatic stress disorder, arthritis, nerve damage, seizures, broken neck, hepatitis C and asthma. The objective medical evidence notes no limitations. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.20, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

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

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: February 4, 2013

Date Mailed: February 4, 2013

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.

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

- A rehearing **MAY** 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 error, 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

VLA/las

cc:

