

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-67049
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: October 31, 2012
County: Kalkaska County

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 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), Retro-MA and State Disability Assistance (SDA)?

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 7, 2012, Claimant applied for MA-P, Retro-MA and SDA benefits.
- (2) On July 12, 2012, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA and SDA application indicating Claimant's impairments lack duration. (Department Exhibit A, pp 1-2).
- (3) On July 16, 2012, the department case worker sent Claimant notice that his application was denied.
- (4) On July 23, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 11, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform a wide range of sedentary work. SDA was denied due to lack of duration. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of diabetes, severe diabetic polyneuropathy/peripheral neuropathy affecting the upper and lower extremities, acquired equinus foot deformity, foot ulcers, obesity, hypertension, heart murmur, obstructive sleep apnea, lumbosacral radiculopathy, depression and anxiety.
- (7) On April 11, 2011, Claimant was evaluated by a neurologist for leg and hand numbness. Based on the electrodiagnostic testing and nerve conduction studies, Claimant has severe median mononeuropathy at the right wrist, compressive neuropathy involving the ulnar nerve in the right arm, severe diabetic polyneuropathy/peripheral neuropathy affecting the upper and lower extremities and lumbosacral radiculopathy or plexopathy affecting the lower extremities. The neurologist opined that the electrodiagnostic testing was remarkably abnormal and if Claimant does not proceed with upper extremity decompressive surgery, the less likely he will have functional recovery of his hands. (Department Exhibit A, pp 124-125).
- (8) On July 11, 2011, Claimant presented to his primary care physician complaining that his toenails were too thick and he was unable to trim them. Claimant was status post phalangectomy left hallux which he stated was still painful and swelling. Claimant was diagnosed with dermatophytosis of the nail, pain in the soft tissues of the limb and abnormality of gait. An x-ray of Claimant's foot showed good alignment, no complications and good correction of the deformity. Claimant agreed to have palliative nail debridement performed and all pedal nails were debrided and anti-fungal spray was applied to the nails. (Department Exhibit A, pp 17-18).
- (9) On August 9, 2011, Claimant went to his primary care physician to follow-up on his depression. The first episode of depression occurred in 2008. He is experiencing diminished interest or pleasure, restlessness, sluggishness and sleep disturbance. Claimant was also suffering from erectile dysfunction. (Department Exhibit A, pp 90-94).
- (10) On September 9, 2011, Claimant saw his primary care physician for follow-up of his diabetes. Claimant's diabetes mellitus began in 1997. He has managed with oral medications and insulin. He is experiencing burning of extremities. Home glucose readings are a minimum of 210 and a maximum of 400. He is compliant with medication, follow-up and educational materials. During the cardiovascular exam, the physician

noted systolic murmurs estimated as grade III/VI, quality was mid-systolic. Blood pressure was 146/98. The heart murmur was previously undiagnosed and he was referred to cardiology for stress testing. Claimant's insulin was increased by 2 units, and he also has access to glucose rescue tabs if needed. Poor control of diabetic neuropathy was noted. (Department Exhibit A, pp 76-81).

- (11) On October 14, 2011, Claimant presented to his primary care physician with moderate to severe pain in his left wrist which radiates to the elbow. Associated symptoms included joint tenderness and numbness. Claimant is left-hand dominant. Claimant was diagnosed with carpal tunnel syndrome of the left wrist and given a nightly wrist splint and referred to a surgeon for evaluation. (Department Exhibit A, pp 68-70).
- (12) On January 13, 2012, Claimant visited his primary care physician complaining of fatigue, pain and weight gain. Claimant presented with difficulty concentrating. Risk factors included depression and obesity. The symptoms are aggravated by stress. The fatigue was associated with loss of interest. Fatigue was discussed with underlying depression as a contributor and Claimant was started on Cymbalta. (Department Exhibit A, pp 58-60).
- (13) On March 22, 2012, Claimant saw his primary care physician for musculoskeletal pain and a foot ulcer. Claimant slipped at home and caught himself to prevent the fall, pulling a muscle when he did so. He also has an ulcer on his left heel that was draining. Treatment consisted of debridement of necrotic tissue. (Department Exhibit A, pp 51-53).
- (14) On April 4, 2012, Claimant underwent a consultation for foot and ankle surgery. Based on the examination, bone spurs would be removed, the great toe joint would be cleaned out to improve pain and motion, and also a release of the tight calf muscle and Achilles tendon of his left ankle would be performed. After surgery, Claimant would be in a cast and on crutches for 4-6 weeks and the resultant swelling would last 6-9 months. (Department Exhibit A, pp 13-14).
- (15) On April 27, 2012, Claimant followed up with his primary care physician concerning his diabetes. Claimant's diabetes had worsened. He had a higher A1C, possibly due to a recent toe infection and procedure. Claimant was counseled to increase exercise and be mindful of his diet. (Department Exhibit A, pp 42-47).
- (16) On May 31, 2012, Claimant presented for pre-operative evaluation for a left endoscopic gastrocnemius recession and great toe cheilectomy scheduled for 6/8/12 after a diagnosis of acquired equinus foot deformity. Claimant is a poorly controlled, non-compliant diabetic. The risks of post-

operative infections and complications with healing based on his non-compliant diet were explained. (Department Exhibit A, pp 15-16, 37-40).

- (17) Claimant is a 38 year old man whose birthday is [REDACTED]. Claimant is 6'0" tall and weighs 340 lbs. Claimant completed high school and last worked in January, 2010.
- (18) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by 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 (DHS or department) 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 Bridges Reference 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 MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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.

The federal regulations require that several considerations be analyzed in sequential order:

. . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?

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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

. . . You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not eligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that Claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant could not do a full range of sedentary work pursuant to Medical Vocational Grid Rule Footnote 201.00(h) due to multiple impairments and his chronic pain which is documented by the medical evidence.

It is noted that the law does not recognize lifestyle choices such as Claimant's—including smoking, obesity, lack of exercise, and lack of work as statutorily disabling. However, most individual who make these choices eventually reach a state where they have irreversible medical problems which will continue to exist even if that individual changes their lifestyle choices such as losing weight, exercising, stopping the nicotine and drug addiction(s), etc.

In this case, Claimant's electrodiagnostic testing and nerve conduction studies and the evidence pursuant to his treating neurologist documents Claimant's need for decompression surgery. This evidence, as already noted, does rise to statutory disability. It is noted that at review Claimant's surgery will be assessed as controlling with regards to continuing eligibility.

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 December 29, 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 December, 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.

/s/

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

Date Signed: January 2, 2013

Date Mailed: January 2, 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.

2012-67049/VLA

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:

