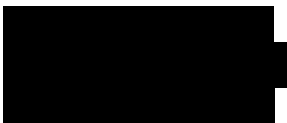


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-69879
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 20, 2012
County: Calhoun

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, an in-person hearing was commenced on August 23, 2012, at the Montmorency County DHS office. Claimant, represented by [REDACTED] [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

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 February 27, 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 January 27, 2012, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On May 7, 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 May 10, 2012, the department sent notice to Claimant that his application for Medicaid had been denied.
- (4) On August 6, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 4, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating that Claimant retains the capacity to perform light exertional tasks of a simple and repetitive nature. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of chronic back pain, intervertebral disc prolapse, carpal tunnel syndrome, depression, and anxiety.
- (7) On January 20, 2012, Claimant was admitted to the hospital after taking 60 pills of Clonidine and 10 pills of Remeron. Claimant was in the ICU where he briefly was on a Dopamine drip for slightly low blood pressure. He was given Narcan IV for the Clonidine overdose. Claimant took it intentionally as a suicide attempt. He was transferred to the floor in stable condition. His heart rate was slightly on the lower side in the lower 40's to upper 50's, but he was asymptomatic. He was medically stable to be sent to the mental health unit. He was seen by a psychiatrist who recommended that he be admitted to the mental health unit for further management of his depression. (Depart Ex. A, pp 10-13).
- (8) On January 21, 2012, Claimant was admitted to the psychiatric in-patient floor for management of his increasing depression and suicide attempt. He remained calm, cooperative and pleasant during the interview. He described his mood as very sad and depressed. His affect was flat and dysphoric. His thought process was clear, coherent and goal directed. He denied audiovisual hallucinations and paranoid delusions. He reported that he does not want to die and is glad that he is still alive because he does not want to have this burden on his wife and children. His insight and judgment were quite significantly impaired. He was fully awake, alert, and oriented to person, place, and time. His memory was intact. Diagnosis: Axis I: Major depressive disorder; Alcohol abuse; Marijuana abuse; Axis III: Chronic pain, chronic back pain; Axis IV: Severe; Axis V: GAF=20. Claimant was discharged on January 24, 2012, with a GAF of 35. Prognosis with medications, therapy and total abstinence from any drugs or alcohol is fair. (Depart Ex. A, pp 1-9).
- (9) On February 9, 2012, Claimant's treating physician completed a medical examination of Claimant. Claimant was diagnosed with back pain, depression, and alcohol abuse. Claimant's physician opined that his condition was stable. (Depart Ex. A, pp 14-15).
- (10) On February 11, 2012, Claimant's lumbar spine MRI revealed Schmorl nodes seen at the superior endplate of L1, injury to L3, and the superior of

endplates L4 and L5. The inter vertebral disc spaces were narrowed and desiccated at the L3- L4, L4-L5, and L5-S1 levels. L3- L4 demonstrated a mild to moderate central and right paracentral disc protrusion with mild right neuroforaminal narrowing. There is displacement (sic) of right L4 nerve root. L4-L5 demonstrates moderate central and the left paracentral disc protrusion with mild left neuroforaminal narrowing. There is abutment of the left L5 nerve root. There is a posterior annular tear. L5-S1 demonstrated mild subligamentous extension of the inferiorly extruded small central disc herniation. Endplate changes were seen at L5- S1 likely degenerative rather than infection. There were multilevel degenerative changes and lumbar spondylosis. (Claimant Ex. A, pp 3-4).

- (11) On February 25, 2012, Claimant presented to the emergency department with back pain and pain radiating down and into his legs. He also reported right and left leg weakness. Claimant was uncomfortable and unable to ambulate normally due to pain. There was an area of local muscle spasm/tenderness over the lower lumbar region. It hurt Claimant to twist axial spine. It is painful for Claimant to bend at the back. He was able to walk but he did so with difficulty due to back pain. He was discharged in stable condition with a diagnosis of low back pain and chronic back pain. (Depart Ex. A, pp 47-49).
- (12) On March 16, 2012, Claimant presented to the emergency department complaining of back pain, which radiated into his legs. Claimant appeared uncomfortable but was able to ambulate normally. He had limited extension of back but good flexion and side to side range of motion. Claimant was discharged in stable condition with a diagnosis of chronic back pain and strain of back. (Depart Ex. A, pp 42-45).
- (13) On March 20, 2012, Claimant's treating physician completed a medical examination of Claimant. Claimant was diagnosed with anxiety, depression, lumbago, spondylosis, spinal stenosis, and degenerative disc disease. Claimant's treating physician opined that Claimant's condition was deteriorating. (Claimant Ex. A, pp 1-2).
- (14) On March 22, 2012, Claimant's treating physician took Claimant off work for 1 week, and returned him to work on restrictions of no lifting over 5 pounds, and sitting positions only. The physician added that Claimant needs to be seen by a spine doctor. (Depart Ex. A, p 111).
- (15) On May 17, 2012, Claimant presented to the emergency department with back pain, left hip pain and left leg numbness. Claimant was unable to ambulate normally due to pain. He was in no acute distress unless he changed position, then he was in moderate distress. There was tenderness over the left SI joint. Positive straight leg raise on the left at 30 degrees. X-rays revealed moderate degenerative disc space narrowing at L4-L5. There was marked degenerative displaced narrowing seen at L5-S1 with a vacuum disc phenomena. There is a 7 mm retrolisthesis of L5

over S1. Endplate irregularities are seen on the inferior T11 and L3 likely representing Schmorl's nodes. His MRI showed multiple paracentral disc herniations throughout the L5-S1 spine. The examining physician recommended Claimant see a spine specialist as he believed Claimant could benefit from surgical intervention. Claimant was discharged in stable condition with a diagnosis of chronic back pain and intervertebral disc prolapse. (Claimant Ex. A, pp 5-13).

- (16) On September 12, 2012, Claimant presented to the emergency department complaining of back pain. He was tender over the lumbar paraspinal muscles. Claimant was discharged in stable condition with a diagnosis of chronic back pain. (Depart Ex. A, pp 14-16).
- (17) Claimant is a 43 year old man, whose birthday is [REDACTED]. Claimant is 6'1" tall and weighs 165 lbs. Claimant has a ninth grade education and last worked in December, 2011.
- (18) 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 back pain, his deteriorating condition and his need for back surgery as indicated by his treating physician and an emergency room physician in addition to his 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 December, 2012; 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 in construction 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 January 27, 2012 MA/Retro-MA application cannot be upheld.

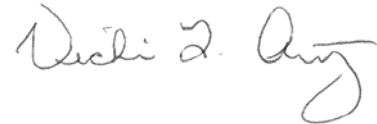
DECISION AND ORDER

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 January 27, 2012 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 March, 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.



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

Date Signed: March 22, 2013

Date Mailed: March 25, 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

2012-69879/VLA

Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

