

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-73446
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: December 12, 2012
County: Macomb-12

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 December 12, 2012, from Lansing, Michigan. Claimant 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 20, 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), 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 February 27, 2012, Claimant filed an application for MA-P/Retro-MA and SDA benefits alleging disability.
- (2) On August 13, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that he was capable of performing his past relevant work as a store clerk. SDA was denied due to lack of duration. (Dept Ex. A, pp 46-47).

- (3) On August 16, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On August 27, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 17, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the ability to perform simple and repetitive tasks. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of chronic obstructive pulmonary disease (COPD), back problems, hypertension, gastroesophageal reflux disease (GERD), vertigo and depression.
- (7) On May 19, 2012, Claimant underwent a medical examination by the [REDACTED] [REDACTED] [REDACTED]. Claimant has decreased and painful range of motion of the cervical and lumbar spine. X-rays of Claimant's lumbar spine showed minimal degenerative osteoarthritic changes of the lumbar spine and minimal narrowing of the intervertebral disc space at L5-S1. Claimant is able to ambulate without the use of an assistive device. He is able to heel walk, toe walk, and tandem walk. He can sit and stand without assistance. He is able to bend, stoop, carry, push, and pull. There is no physical limitation of sitting, standing, or walking. Diagnosis: Complaint of low back pain, lumbar spine x-rays, asthma, hypertension, GERD, and tobacco dependency. (Dept. Ex. A, pp 37-45).
- (8) On June 4, 2012, Claimant's treating physician completed a medical evaluation of Claimant. Claimant was diagnosed with low back pain, dizziness, recent palpitations, hypertension, COPD, and GERD. Claimant's treating physician opined that Claimant's condition was deteriorating. (Dept. Ex. A, pp 26-27).
- (9) On November 19, 2012, Claimant's treating physician completed a Dizziness Residual Functional Capacity Questionnaire diagnosing Claimant with Vertigo. The physician opined that Claimant has dizziness that is possibly related to Meniere's disease. Claimant's episodes of dizziness occur daily last 5 minutes to an hour. There are no precipitating factors. Symptoms associated with the dizziness are nausea, vomiting, occasional double vision, inability to concentrate, headaches, and balance problems. After the episode of dizziness, Claimant may experience confusion and cloudy thinking for 30 minutes. The dizziness causes him to stop what he is doing until the episode passes. He has been prescribed Antvert which has not helped. Claimant will need to take daily unscheduled breaks of up to an hour during an 8-hour working day. He is incapable of even "low stress" jobs because when he is stressed he must remove himself from the situation. His dizziness will produce good and bad days. Due to the dizziness he will be absent more than 4 days a

month. He would be limited in his ability to stand, walk and work from heights.

- (10) On December 3, 2012, Claimant's treating physician completed a Pulmonary Residual Functional Capacity Questionnaire regarding Claimant. Claimant is diagnosed with COPD. He has shortness of breath, wheezing, and episodic acute bronchitis. The physician opined that Claimant's impairments have lasted and can expect to last at least 12 months. Claimant can sit or stand for 30 minutes and stand or walk for less than 2 hours. Claimant will need to take unscheduled breaks during an 8 hour working shift on a daily basis to sit quietly. Claimant can rarely lift 10-20 pounds, and never 50 pounds. He cannot stoop or climb ladders. He can rarely twist or crouch and squat. He can occasionally climb stairs. Claimant's impairments will cause good and bad days and will be absent on average 4 days per month. Claimant's physician concluded that his depression would also affect his ability to work at a regular job on a sustained basis.
- (11) On December 3, 2012, Claimant's treating physician also completed a Mental Impairment Questionnaire and diagnosed Claimant with depression. Claimant was prescribed Eschhalopram which caused fatigue. Claimant's symptoms were decreased energy, feelings of guilty or worthlessness, generalized persistent anxiety, mood disturbance, difficulty thinking or concentrating, change in personality, and emotional withdrawal or isolation. Further, Claimant would be unable to meet competitive standards for remembering work-like procedures, carrying out very short and simple instructions, maintaining attention for a 2-hour segment, making simple work-related decisions, complete a normal workday and workweek without interruptions from psychologically based symptoms, respond appropriately to changes in a routine work setting, deal with normal work stress, understand and remember detailed instructions, or carry out detailed instructions. The physician opined that Claimant would be absent two times a month and the impairment had listed or can be expected to last at least 12 months.
- (12) On January 8, 2013, Claimant's treating physician submitted a written letter indicating Claimant has multiple medical problems including hypertension, COPD, chronic low back pain due to lumbar bulging discs, depression, vertigo, and tobacco addiction. Claimant's back pain occasionally radiates down both legs. He has intermittent numbness involving the left leg. The pain interfered with his sleep, and prevents him from doing such activities as walking distances, bending, lifting, etc. He must alternate between sitting and standing. He would benefit from an EMG to assess for sciatica. He also has COPD with intermittent episodes of bronchitis. He is currently using a nebulizer machine, rescue medications, and daily maintenance medications. He states that he gets winded when walking up stairs and has to rest after 1/4 of a block due to wheezing and shortness of breath. Although he has reduced his smoking,

his COPD has progressively worsened over the years due to his inability to quit smoking. His COPD is flared by respiratory infections, temperature extremes, and exposure to fumes. Most recently, he has developed vertigo. The vertigo occurs daily and lasts from five minutes to one hour per episode. There is no warning and at times it is associated with nausea, headaches, poor concentration, double vision, and ear fullness. During these episodes he feels off balance when walking or standing and must sit or lie down. He has been treated with meclizine with limited success. Consequently he would be unable to operate heavy machinery or climb ladders and work in high areas. He cannot drive during these episodes. He would benefit from an ENT and neurology consultation for Meniere's disease. For the above mentioned reasons, Claimant's treating physician opined that Claimant is disabled and unable to work.

- (13) Claimant is a 55 year old man whose birthday is [REDACTED]. Claimant is 5'5" tall and weighs 145 lbs. Claimant completed the fifth grade. English is his second language.
- (14) 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).

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manual s. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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).

In Claimant's case, the ongoing and unpredictable daily disability, chronic back pain 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 2010; 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 and mental 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 the 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 medical findings, that Claimant cannot return to his past relevant work because the rigors of working as a cashier are completely outside the scope of his physical and mental 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 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). Based on Claimant's vocational profile (advanced age, Claimant is 55, has a fifth grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA, Retro/MA and SDA are approved using Vocational Rule 202.01 as a guide. Consequently, the department's denial of his February 27, 2012, MA/Retro-MA and SDA 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 and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's February 27, 2012, 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 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.

It is SO ORDERED.

/s/

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

Date Signed: March 15, 2013

Date Mailed: March 18, 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:

