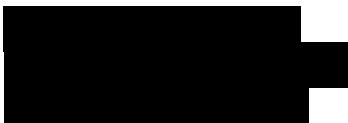


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-75541
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 3, 2013
County: Saginaw

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 January 3, 2013, at the Saginaw County DHS office. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [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 April 11, 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 17, 2012, Claimant filed an application for MA/Retro-MA benefits alleging disability.
- (2) On June 20, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA. (Dept Ex. A, pp 1-2).
- (3) On July 2, 2012, the department sent out notice to Claimant that his application for Medicaid had been denied.

- (4) On August 31, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 18, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant's condition is expected to improve since the total knee replacement and is not expected to last the required 12 months duration. (Depart Ex. B).
- (6) Claimant has a history of hypertension, two herniated discs, osteoarthritis, diabetes mellitus II, transient ischemic attacks, left knee replacement, and sleep apnea.
- (7) Claimant is a 47 year old man whose birthday is [REDACTED] Claimant is 5'6" tall and weighs 260 lbs. Claimant completed the ninth grade. He has not worked since September, 2001.
- (8) Claimant had not 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 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 September, 2001. 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).

On May 20, 2003, Claimant's lumbar spine x-ray revealed moderate disc space narrowing and spondylotic degenerative changes at L4-L5 and mild spondylotic degenerative changes at L2-L3 and L3-L4.

On May 27, 2003, Claimant's lumbar spine MRI without contrast showed degenerative discs at L4-L5 with type II discogenic endplate sclerosis. There is degenerative diffuse bulging annulus asymmetric to the left posterolateral and lateral aspect along with endplate osteophytic spurs and hypertrophic facet joints severely compromising the left neuroforamen and the intraforaminal and post ganglionic left L4 nerve root. The MRI also showed mild acquired spondylostenosis at L3-L4.

On March 11, 2010, Claimant's lumbar x-ray revealed moderate degenerative spondylosis and modest degenerative findings at L4-L5 and also L3-L4. There is also spinal stenosis narrowing of the AP diameter of the lumbar spinal canal.

On February 29, 2012, Claimant's chest x-rays showed no evidence of an active cardiopulmonary process.

On March 6, 2012, Claimant was admitted to the hospital for a left knee replacement. X-rays of the left knee showed satisfactory post operative appearance of left knee arthroplasty. He was discharged on March 9, 2012, in stable condition.

On April 18, 2012, Claimant underwent a medical examination by his treating physician. Claimant was diagnosed with diabetes mellitus, displacement of intervertebral discs, transient ischemic attacks, osteoarthritis, sleep apnea and hypertension. This medical examination was given little weight because it was not completed and appeared to have been written by someone other than Claimant's treating physician.

On June 19, 2012, Claimant's treating physician wrote that Claimant was under his care and was being treated for osteoarthritis, diabetes mellitus II, herniated vertebrae, hypertension and had a history of transient ischemic attacks.

On January 16, 2013, Claimant underwent a medical examination by his treating physician. Claimant was diagnosed with pain from osteoarthritis and herniated discs. The treating physician opined that Claimant's condition was deteriorating and he was unable to meet his needs in the home.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with hypertension, two herniated discs, osteoarthritis, diabetes mellitus II, transient ischemic attacks, left knee replacement, and sleep apnea. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter, back to at least 2003 according to the medical evidence submitted, Claimant had herniated discs and osteoarthritis which would affect his ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

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, 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. Moreover, Claimant's treating physician opined that Claimant is disabled based on the chronic pain from his osteoarthritis and herniated discs and is unable to meet his own needs in his home. Because Claimant's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2). This evidence, as already noted, does rise to statutory disability.

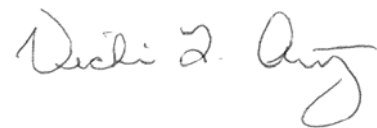
DECISION AND ORDER

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 May 17, 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 May, 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.



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

Date Signed: May 7, 2013

Date Mailed: May 7, 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 mailing 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,

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- 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:

