

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-55660
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 20, 2013
County: Bay

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 February 20, 2013, at the DHS office in Bay County. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED]

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 December 29, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On February 16, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA due to drug and alcohol abuse. (Dept Ex. A, pp 47-48).
- (3) On February 21, 2012, the department sent notice to Claimant that his application for Medicaid had been denied.
- (4) On May 23, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On January 15, 2013, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating that Claimant retains the capacity to perform simple repetitive tasks that avoid the use of ropes, ladders, scaffolding and more than a concent rated exposure to unprotected heights and dangerous machinery. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of back pain, chronic microvascular ischemia seizures, cholecystitis, chronic obstructive pulmonary disease (COPD), obstructive sleep apnea (OSA), headaches, neuropathy, personality disorder, depression, and anxiety.
- (7) On March 23, 2011, Claimant was admitted to the hospital for further evaluation after being brought to the emergency department by ambulance from work because his coworkers felt that he was having a seizure. On all neurogenic and cardiogenic imaging, there were no acute findings noted. However, he was noted to have some changes on his MRI that were consistent with chronic microvascular ischemia. Claimant does not follow regularly with a family physician and he would not accept any type of prescriptions at the time of discharge on March 25, 2011. Claimant's discharge diagnosis was seizure versus near-syncopal event, heavy alcohol use, history of alcohol-related seizures, tobacco use, and noncompliance with medication recommendations. (Depart Ex. A, pp 163-186).
- (8) On April 20, 2011, Claimant's electroencephalogram (EEG) was normal during wakefulness and drowsiness. The reviewing physician opined that a normal EEG does not preclude the possibility of epilepsy. (Depart Ex. A, p 60).
- (9) On July 15, 2011, Claimant was admitted to the hospital with alcohol related seizures. Claimant did not have any recurrence of seizures and it was recommended that he detox and abstain from alcohol. He was discharged on July 18, 2011, with a diagnosis of seizures, alcoholism, cigarette smoking, acute bronchitis, history of seizures, alcoholic liver disease, thrombocytopenia, hypokalemia, and hyponatremia. (Depart Ex. A, pp 63-97).
- (10) On August 11, 2011, Claimant was brought to the emergency room by his mother after a seizure. Claimant was diagnosed with acute alcohol intoxication. (Depart Ex. A, pp 151-154).
- (11) On November 8, 2011, Claimant participated in a psychological evaluation by the [REDACTED]. There is a report from [REDACTED] from July 15, 2011 which indicates that Claimant has a history of alcohol related seizures in the past, history of alcoholism, cigarette smoking, and alcoholic liver disease. He was admitted to [REDACTED] with a seizure episode. It does note he drinks about a 12 pack of beer on a daily basis. The diagnosis was alcoholic seizure, early

withdrawal. Also included is an Adult Function Report completed by his wife. It does note Claimant is not able to do the job he has been doing. He is not allowed to drive due to his seizure. He seems to be depressed. He spends some time walking around, etc. This is all consistent with his self report. Diagnosis: Axis I: Major Depressive Disorder, recurrent, severe; Alcohol Dependence; Axis II: Personality Disorder; Axis III: Liver disease; Alcoholic Seizure; Axis V: GAF=43. Prognosis is poor. He plans to continue drinking. The examining psychologist opined that his drinking seems to contribute to some of his health problems. However, he has been a functional alcoholic for decades and is desirous of returning to work. He seems to have the skill set to be able to engage in jobs similar to jobs he has done in the past. The psychologist indicated Claimant is not capable of managing his own funds due to his ongoing alcoholism. (Depart Ex. B, pp 3-7).

- (12) On November 29, 2011, Claimant was transported to the emergency department by ambulance after his wife found him unresponsive on the floor. Claimant was intoxicated and found to have an alcohol level of 0.53. He had alcoholic poisoning and was admitted to the hospital for evaluation and treatment. EKG was normal. CT scan of the brain showed no acute pathology. CT of the cervical spine showed no significant abnormality. A chest x-ray also showed no acute abnormality. He was discharged on December 2, 2011. (Depart Ex. A, pp 107-140).
- (13) On December 20, 2011, an ultrasound of Claimant's abdomen revealed a slight thickening of the wall of the gallbladder compatible with chronic cholecystitis. There was also mild fatty infiltration of the liver. (Depart Ex. A, p 23).
- (14) On December 15, 2011, Claimant's x-rays showed mild endplate hypertrophic changes in the lumbar spine. (Depart Ex. A, p 24).
- (15) On December 7, 2011, Claimant's Spirometry report revealed he had a moderate obstruction affecting his breathing. (Depart Ex. A, p 27).
- (16) On July 18, 2012, Claimant underwent a medical examination by the [REDACTED] [REDACTED] [REDACTED]. The examining physician indicated that Claimant has a progressive disease. Per the chart there was mention of possible heavy alcohol use and alcohol withdrawal seizures. The examining physician opined that if this is the case, he may have paresthesias secondary to neuropathy from the alcohol use in the past. Also, he had a physical job which may have contributed to some spinal injury. The physician suggested Claimant have aggressive medical management and continued orthopedic follow-up. He also suggested Claimant have imaging of the spine and further testing by EMG and a neurologist to evaluate the peripheral neuropathy. The physician opined that if progressive and not improving with further evaluation and medical

treatment, then Claimant should be re-evaluated for potential disability. (Depart Ex. B, pp 8-20).

- (17) Claimant is a 51 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 150 lbs. Claimant has a high school education and last worked in March, 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 seizures despite taking anti-seizure medication 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 his first seizure at work in March, 2011; 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 as a winder operator 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 December 29, 2011 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 December 29, 2011 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.

/s/

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

Date Signed: March 8, 2013

Date Mailed: March 8, 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

2012-55660/VLA

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cc:

