

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-69881
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: November 15, 2012
County: Manistee

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 November 15, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payments Supervisor [REDACTED] and Eligibility Specialist [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) 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 April 30, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On July 11, 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). SDA was denied due to lack of duration. (Department Exhibit A, pp 4-5).
- (3) On July 16, 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 September 28, 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 sedentary work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of right hip osteoarthritis, degenerative disc disease, degenerative joint disease, depression, gout, hypertension, arthritis and sciatica.
- (7) Claimant has a history of lumbar arthritis, osteoarthritis without myelopathy, degenerative disc disease, bulging/herniated disc, foraminal stenosis, radiculitis and facet hypertrophy. On January 21, 2010, Claimant's lumbar MRI revealed L3-L4 degenerative disc disease, bulging disc and facet degeneration/hypertrophy; L4-L5 degenerative disc disease, bulging disc, herniated disc, facet degenerative/hypertrophy, and foraminal stenosis, and L5-S1 degenerative disc disease, bulging disc and facet degeneration/hypertrophy. The MRI also noted disc tears at L3-L4 and L4-L5. On January 25, 2010, Claimant underwent surgery resulting in destruction by Thermal Ablation of the Paravertebral Facet Joint Nerves Bilateral L3-L4, Left L4-L5 and Bilateral L5-S1 in addition to Lumbar Laminotomy with Foraminotomy including Partial Facetectomy and Decompression of the Nerve Roots Right L4-L5. In June, 2010, he was diagnosed with failed back surgery and right hip osteoarthritis. He had also started to experience right calf lateral pain and sharp burning type pain worse with activity. Right hip pain was mainly in the area directly over his right hip and radiated at times to the groin and was associated with morning stiffness. (Department Exhibit A, pp 59, 76, 118, 125-126).
- (8) On December 10, 2011, Claimant had a medical evaluation by the Disability Determination Service. Claimant's chief complaints were right hip and leg pain, right knee pain and sciatica. He did undergo an MRI and then in 2010 had a microdissection in Florida. He was told at that time that more of his lower spine should have been taken care of for optimal improvement. He had injections to eliminate left sided sciatica and then the failed microdissection in 2010. He began using a cane because he was more comfortable. He is in pain 24/7 and has major pains in the right hip and knee. Straight leg raising was accomplished to 20 degrees on the right and 40 degrees on the left. He has an ataxic gait and walks with a mild bilateral limp, without the use of an assistive device. The examining physician opined that Claimant has had two attempts at improving his symptoms that have both essentially failed. His range of motion of the lumbar spine is impaired. The degenerative joint disease affects the right hip and the right knee. Range of motion of the right hip is impaired. It is impaired equally in the hips, but the right is more symptomatic. Since beginning the use of a cane, he has been far more comfortable than he had been, however he has been disinclined to attempt distance walking or any other more vigorous activity. (Department Exhibit A, pp 32-36).

- (9) On December 13, 2011, Claimant presented to the emergency department complaining of right hip pain. Claimant stated he “overused” his hip which needs to be replaced and that was what was causing the pain. He needed assistance ambulating and had a slow, antalgic gait and limited range of motion which was consistent with right hip pain. Claimant was advised that chronic pain should not be treated in an ER, but from looking back at his electronic medical records, he had never asked for pain medications in the past. The examining physician suspected he did have a fairly serious hip issue and he was prescribed 30 Vicodin which he was instructed to use in conjunction with Naproxen and discharged. (Department Exhibit A, pp 23-31).
- (10) On June 25, 2012, Claimant saw his primary care physician for worsening and severe right anterior hip, lateral hip and posterior hip pain. There was radiation of pain to the right inguinal region. Symptom aggravated by active movement, climbing stairs, jumping, kneeling, lifting weight, pushing, and squatting. Claimant also had back and joint pain. He had an antalgic gait. He had right hip pain and decreased range of motion. X-rays of Claimant’s right hip revealed advanced osteoarthritic changes in the right hip joint with extensive sclerosis. There was probably a component of collapse of the articular surface of the femoral head consistent with chronic avascular necrosis. (Claimant Exhibit A, pp 3-8).
- (11) On October 15, 2012, Claimant saw his orthopedist to discuss total right hip replacement. Claimant complained of pain on the side of the hip, in the groin, at rest, with activity and aggravated when lying on his side. There was weakness in the hip with climbing stairs and getting up from sitting. There was also numbness and tingling in the hip and in the leg. Because of his difficulty ambulating, Claimant used a cane. External and internal hip range of motion was decreased. Claimant’s orthopedist opined that Claimant has advanced arthritis of his right hip. There is anatomic deformity, chronic joint pain, stiffness, loss of joint space and advanced bone-on-bone changes with cystic changes. It has affected his ability to ambulate effectively. He would benefit from right hip arthroplasty and based on his age, would then be able to resume work activities. (Claimant Exhibit A, pp 1-2).
- (12) Claimant is a 49 year old man whose birthday is [REDACTED]. Claimant is 5’11” tall and weighs 180 lbs. Claimant has a high school education and last worked in June, 2011.
- (13) 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).

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 Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 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.

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, hip and knee 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 June, 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 cleaning houses is

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 April 30, 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 April 30, 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 February, 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: February 5, 2013

Date Mailed: February 5, 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:

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- 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:

