

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-70504
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: November 15, 2012
County: Ionia

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, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] and Assistant Attorney General [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 8, 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) 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 July 5, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On September 24, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA indicating that Claimant was

capable of performing other work, pursuant to 20 C FR 416.920(f). SDA was denied due to lack of duration.

- (3) On August 1, 2012, the department sent notice to Claimant that his application for Medicaid had been denied.
- (4) On August 10, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 26, 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 a wide range of light work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of rheumatoid arthritis, asthma, moderate chronic obstructive pulmonary disease (COPD), emphysema, Bell's palsy and depression.
- (7) On February 23, 2011, x-rays of Claimant's right hand revealed mild narrowing of joint spaces predominantly interphalangeal joints with adjacent soft tissue swelling. No erosions identified. The overall appearance is suggestive of early osteoarthritis. There was also a tiny irregular foreign body in the dermal layer on the dorsum of the right hand between the 2nd and 3rd metacarpal bones of uncertain etiology. X-rays of the left hand showed mild early findings suggesting osteoarthritis along the interphalangeal joint of the thumb and the distal interphalangeal joints of the fourth and fifth digits with mild narrowing of the first and second carpal-metacarpal joint spaces as well. No acute osseous abnormalities are identified. X-ray of the left shoulder revealed a widening of the acromioclavicular joint that could be due to old surgery. (Depart Ex. A, pp 85-90).
- (8) On April 22, 2011, Claimant presented to the emergency department with a facial droop that started last night and is still present. He has had difficulty with speech, trouble swallowing, weakness and numbness. He had mild slurred speech and weakness of the left face and arm. He was diagnosed with Bell's Palsy. He was prescribed Acyclovir and Prednisone and instructed to contact his primary care physician and released. (Depart Ex. C, pp 188-198).
- (9) On May 10, 2011, Claimant's pulmonary function study showed the spirometry is indicative of a moderate obstructive defect with no bronchodilator change. Flow volume loop is indicative of small airway disease. Lung volumes are indicative of air trapping. Diffusion capacity and airway resistance are within normal limits. Maximal pulmonary pressures are within normal limits as well. Overall, the findings are suggestive of chronic obstructive pulmonary disease, along with fixed

airway disease, also in addition to the history of asthma. (Depart Ex. A, p 171).

- (10) On June 23, 2011, Claimant's echocardiogram revealed the left ventricle appears normal in size and the ejection fraction appears to be 55-60%. He had a borderline dilated right ventricle and a mildly dilated right atrium. (Depart Ex. A, p 147).
- (11) On November 1, 2011, Claimant's treating physician conducted a medical examination opined that Claimant suffers from moderate to severe pain. Claimant is diagnosed with inflammatory arthritis and sero-negative RA. He has synovitis and tenderness over the hands, shoulders and feet. He can occasionally do fine motor manipulation, raise his arms over shoulder level and would frequently require time to elevate his legs during an 8-hour day. (Depart Ex. A, pp 29-30).
- (12) On April 26, 2012, Claimant was started on chemotherapy drug Rituxan for rheumatoid arthritis. (Depart Ex. A, pp 119-122).
- (13) On May 16, 2012, Claimant returned for an infusion of chemotherapy drug Rituxan for rheumatoid arthritis. He presented with joint complaint. Bilateral hands, left hip, back. It is described as chronic. It is located diffusely. The symptoms are ongoing and started years ago. (Depart Ex. A, pp 123-125).
- (14) On August 22, 2012, Claimant's treating physician completed a Medical Source Statement of Ability to do Work-Related Activities (Mental). Claimant's physician opined that Claimant has memory issues. He was in special education in school and needs written instructions. He has marked limitations in his ability to understand and remember complex instructions. His physician also opined that he has joint pain which severely limits him from physical activity, such as lifting, stooping, bending, walking distances, or standing for periods of time based on his joint pain, synovitis, and elevated sedentary rate. Claimant is diagnosed with Rheumatoid Arthritis. The treating physician indicated Claimant cannot work. He can stand for 15 minutes, sit for 15 minutes, occasionally lift 5 pounds, and occasionally raise his arms over shoulder level. He has limited distance vision and suffers from moderate to severe pain. The treating physician opined that the above limitations have lasted or will last for 12 consecutive months. (Depart Ex. A, pp 226-229).
- (15) On October 30, 2012, Claimant's electrodiagnostic results showed evidence of a right median mononeuropathy at the wrist (carpal tunnel syndrome) with evidence of sensory and motor involvement. There is evidence of mild focal demyelination and conduction block. There is also evidence of a left median mononeuropathy at the wrist (carpal tunnel syndrome) with evidence of sensory and motor involvement. There is also

evidence of moderate focal demyelination and conduction block. Surgical consultation is recommended. (Claimant Ex. A-E).

- (16) On November 13, 2012, Claimant returned for an infusion of chemotherapy drug Rituxan for rheumatoid arthritis. He had a fractured ankle and foot and is scheduled for surgery this week. He presented with bilateral hands, right ankle, and back joint pain. Claimant was informed the infusion would have to be held until after surgery. (Department Ex. A, pp 230-231).
- (17) Claimant is a 47 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 300 lbs. Claimant has a high school equivalent education and last worked in 2005.
- (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 (RTM).

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 (RTM).

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 joint pain, shortness of breath 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 2005; 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 janitor and bus boy 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 July 5, 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 July 5, 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.

/s/

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

Date Signed: March 4, 2013

Date Mailed: March 4, 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:

