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

IN THE MATTER OF:

[redacted]

Reg. No: 201272246
Issue No: 2009
Case No: [redacted]
Hearing Date: December 6, 2012
Alpena County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on December 6, 2012. The claimant appeared and provided testimony. The claimant was represented by [redacted] The department witnesses were [redacted].

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) application?

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 March 22, 2012, claimant applied for MA with the Michigan Department of Human Services (DHS).

2. Claimant applied for retro MA.

3. On May 11, 2012, the MRT denied.

4. The DHS issued written notice of the denial.

5. On August 14, 2013, claimant filed a timely hearing request.

6. Claimant testified at the administrative hearing that he has an SSI application pending with the Social Security Administration (SSA).

7. On October 5, 2012, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on January 23, 2013 SHRT once again denied claimant.

8. As of the date of hearing, claimant was a 47-year-old male standing 5'9" tall and weighing 22 pounds. Claimant has a high school education and a Commercial Driver's License.

9. Claimant testified that he does not smoke cigarettes, drinks alcohol on an occasional basis and does not use illegal drugs.

10. Claimant has a driver's license and can drive an automobile.

11. Claimant is not currently working. Claimant last worked in September, 2012 as a truck driver. Claimant had been off work since October, 2011, but attempted to return in August, 2012, but was unable to continue due to numbness of his arm and face and blurry vision. Claimant also previously worked as a carpenter.

12. Claimant alleges disability on the basis of heart problems (including a December, 2011 aortic valve replacement), diabetes, high blood pressure, asthma and a heart murmur.

    A November 21, 2011 CT chest angio of the heart found extensive calcification at the aortic valve compatible with known aortic stenosis. There was mild aneurismal dilation of ascending aorta measuring 43 mm at the level of right pulmonary artery.

    On December 14, 2011, the claimant underwent a minimally invasive aortic valve replacement. After his surgery, he was found to be hyperglycemic and required insulin infusion to maintain his glucose levels within therapeutic goal range. Claimant was discharged on December 19, 2011.

    A December 24, 2011 progress note indicates that after the claimant left the hospital, he had a hard time catching his breath and developed chest pain, so he came back to the hospital and was admitted on December 23, 2011. He reported no symptoms of diabetic neuropathy or retinopathy. A December 24, 2011 CT of the thorax found no pulmonary emboli.

    Claimant was seen for a post-operative visit on January 9, 2012. The physician opined that the shortness of breath may have been anxiety related. The claimant reported that his pain was improving and he denied current shortness of breath. His incision was healing well and his sternum was stable to deep palpation and cough. His extremities were without

edema. An EKG showed normal sinus rhythm with a ventricular rate of 87 beats per minute. A chest x-ray showed clear lung fields bilaterally and an unremarkable cardiac silhouette.

The claimant had a dental abscess and sinus infection and was admitted from January 22, 2012 to January 27, 2012.

A February 28, 2012 post-surgical visit found the heart had a regular rate and rhythm. There was a 2/6 systolic murmur at the right upper sternal border. This murmur did not have a harsh quality to it. There was a normal S1 and S2. There was no rub or gallop. The lungs were clear to auscultation bilaterally with good air movement. There was no lower extremity edema. There were 2+ radial pulses bilaterally. While the claimant's blood pressure was improved from the week before, his lisinopril was increased.

Claimant was admitted to the hospital again on March 8, 2012 for muscle cramps, back pain and orthostatic hypotension. The claimant's blood pressure medications had been increased; including his diuretics and this was believed to have dehydrated him and lowered his blood pressure too much. His renal function corrected with fluids and medication adjustment and he was discharged on March 10, 2012.

A Medical Examination Report (DHS-49) completed on March 16, 2012 indicates that the claimant can frequently lift up to 25 pounds, but never 50 or more. The claimant can stand and/or walk up to six hours in an eight hour work day. The claimant can use both hands/arms for repetitive actions (grasping, reaching, pushing, pulling, manipulating) and both feet/legs for operating foot/leg controls. No mental limitations were noted.

A Medical Examination Report (DHS-49) completed on March 20, 2012 indicates that the claimant can occasionally lift 20 pounds, but never 25 or more. The claimant should stand and/or walk less than two hours in an eight hour work day. The claimant can use both hands/arms for repetitive actions and both feet/legs for repetitive actions.

An April 4, 2012 pulmonary clinic consultation found the claimant complaining of shortness of breath. Claimant's lungs had symmetric bilateral excursion, normal percussion and clear breath sounds with no wheezing or rhonchi. Spirometry showed fairly normal volumes, except for evidence of a very mild obstructive ventilatory defect.

A December 3, 2012 Medical Examination Report and Medical Needs form indicates that the claimant should only occasionally lift less than 10 pounds. The physician indicates that the claimant is capable of working with limitations of avoiding heavy lifting until the sternum is well healed

(which he points out may or may not have occurred since he last saw him in June, 2012).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by 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 (DHS or department) 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 Program Reference Manual (RFT).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

> "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.

The federal regulations require that several considerations be analyzed in sequential order:

> ...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled

> regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
>
> 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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
>
> 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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

> ...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

> ...Medical reports should include --
>
> (1) Medical history.

> (2) Clinical findings (such as the results of physical or mental status examinations);
>
> (3) Laboratory findings (such as sure, X-rays);
>
> (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).
>
> ...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a)
> Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

> (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
>
> (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

> (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant’s symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8.

Claimant's complaints and allegations concerning impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental capacity to engage in light work activities on a regular and continuing basis. The claimant's physician has submitted some conflicting information in the Medical Examination Reports. The claimant's physician indicates in the latest report (December, 2012) that the claimant can lift more than ten pounds once the sternum is fully healed, which he points out may or may not have occurred since he last saw him in June, 2012. The claimant's treating physician indicated on the March 20, 2012 report that the claimant can occasionally lift 20 pounds, but never 25 or more. The claimant should stand and/or walk less than two hours in an eight hour work day. The claimant can use both hands/arms for repetitive actions and both feet/legs for repetitive actions. The claimant testified at hearing that he is able to

walk one mile, stand for 10 – 15 minutes, sit for one hour and lift up to 50 pounds. This Administrative Law Judge finds it impossible to reconcile how a claimant could walk one mile at a time, yet only stand for 10 – 15 minutes. This Administrative Law Judge does not find that the medical evidence of record supports restrictions so severe as to warrant a sedentary restriction. This Administrative Law Judge finds the claimant to be capable of light exertional work.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant cannot return to past relevant work on the basis of the medical evidence. The claimant's previous relevant work experience as a truck driver and carpenter are classified as medium work according to the Dictionary of Occupation Titles. The analysis continues.

At the last step of the sequential evaluation process, the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. 20 CFR 404.1520(g) and 416.920(g).

Claimant has submitted insufficient objective medical evidence that he lacked the residual functional capacity to perform at least light work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that she could not perform at least light work. Under the Medical-Vocational guidelines, a younger individual (age 47) with a high school education or more and a skilled or semi-skilled work history who can perform at least light work is not considered disabled pursuant to Medical-Vocational Rule 202.21.

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is **UPHELD**.

/s/_____
Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 4, 2013

Date Mailed: March 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 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,
- 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

SLM/cr

cc: [redacted]