

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

IN THE MATTER OF:



Reg. No.: 2012-76626
Issue No.: 2009; 4031
Case No.:
Hearing Date: January 15, 2013
County: St. Joseph

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 15, 2013, at the DHS office in St. Joseph County. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payments Supervisor and Eligibility Specialist .

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA benefits and State Disability Assistance (SDA)?

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 10, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On July 27, 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).
- (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 October 24, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating that as a result of Claimant's combination of severe physical and mental condition, he is restricted to performing sedentary unskilled work. SDA was denied because the information in the file was inadequate to ascertain whether Claimant is or would be disabled for 90 days. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of diabetes, neuropathy, chronic obstructive pulmonary disease (COPD), hypertension, self-catheterization due to neurogenic bladder problems, hydronephrosis, urinary tract infections, depression and suicidal ideations.
- (7) On March 11, 2011, Claimant saw his primary care physician for urinary retention. Claimant was in the emergency room on February 10, 2011, with suprapubic pain/ abdominal pain and decrease in appetite. He was found to be in urinary retention with over 1000 cc residual. He had bilateral moderate hydronephrosis likely related to the severe bladder distention. He stated that back on December 1, 2010, he had a similar episode where they drained 4 liters of fluid from his bladder and he required hospitalization for a few days. He has a history of diabetes with blood sugars in the 300 range originally, although he stated they are well controlled now as he is currently taking Tamsulosin. A renal ultrasound on 2/21/11 revealed minimal left hydronephrosis, an 8 mm right renal cyst and an enlarged prostate. Urodynamic testing demonstrated a first desire at 143 cc. Capacity was 646 cc. He was unable to generate any kind of detrusor contraction pressure and was unable to urinate even with straining. He was instructed that he could stop the Tamsulosin and he would be referred back to the nurses to be taught intermittent catheterization every 4-6 hours. He understood that he will likely need to do this for the rest of his life. A repeat creatinine level and renal ultrasound was recommended in six months to ensure he was not having further renal damage. (Department Exhibit A, pp 44-47).
- (8) On March 16, 2011, based on Claimant's chronic urinary retention, Claimant met with a lab technician and was instructed on how to self-catheterize. Claimant was instructed to self catheterization six times a day. (Department Exhibit A, pp 42-43).
- (9) On January 18, 2012, Claimant was pre-screened by [REDACTED] [REDACTED] [REDACTED] in the emergency room. Claimant reported that he spends all day thinking of ways to kill himself. He stated that he is "useless," and feels bad about his kids supporting him. His eye contact was intermittent. His sleep was decreased and irregular, his appetite was increased and his affect was restricted. Claimant was diagnosed as suicidal, stating he was thinking of walking in front of a semi or taking 50 units of Humalog. He had a psychiatric hospitalization on 10/24/11 after a suicide attempt, and again on 11/1/11. Diagnosis: Axis I: Depressive Disorder; Axis III:

Diabetes mellitus type 2, Hypertension, Neurogenic bladder, Incompetent left knee, Benign prostatic hypertrophy ; Axis IV: Problems with access to healthcare service; Occupational and Economic problems; Axis V: GAF=35. (Department Exhibit A, pp 104-113).

- (9) On April 7, 2012, Claimant presented to the emergency room for evaluation of an elevated blood sugar and kidney pain. He has had diabetes since 2006 and had been using his deceased wife's Lantus twice a day in an effort to control his blood sugar. He was found to have a blood sugar well over 600 and was subsequently admitted for IV hydration and blood sugar control. He was unkempt and unshaven. He complained that he had no sensation in his stomach or through his abdomen and does self catheter 3 to 4 times a day for neurogenic bladder. He was anxious and depressed. He was discharged on April 9, 2012 with a diagnosis of uncontrolled diabetes, insulin dependent, acute renal failure, a urinary tract infection, anxiety and depression. (Department Exhibit A, pp 230-239).
- (10) On May 24, 2012, Claimant met with his therapist at [REDACTED]. Claimant continued to struggle with depression and anxiety. He had recently been diagnosed with COPD. He stated that he does not have Medicaid and is unable to afford oxygen. He said that he was not having suicidal thoughts very often and if he did he was able to control them. His present symptoms were anxiety, decreased energy, depressed mood, mood swings, somatic complaints and worthlessness. GAF=40. (Department Exhibit A, pp 70-72).
- (11) On June 1, 2012, Claimant underwent a medical examination on behalf of the department. Claimant was diagnosed with diabetes and diabetic neuropathy. He had an abnormal gait and used a cane. The examining physician indicated Claimant's condition was stable and he had physical restrictions of lifting no more than 10 pounds and required a cane to ambulate. (Department Exhibit A, pp 34-36).
- (12) On August 10, 2012, Claimant underwent a medical examination by the Disability Determination Service. Claimant has a history of diabetes, neurogenic bladder problems and COPD. The examining physician opined that Claimant has neuropathy in his hands and feet. His sugars appeared to be controlled since starting insulin in April, 2012. He uses a cane, which is required for stability secondary to his neuropathy and left knee reconstruction. In regards to his COPD, his lungs were clear to auscultation, but he was short of breath and had a bronchospastic cough. His bladder problems are secondary to diabetes for which he self catheterizes and has frequent urinary tract infections. (Department Exhibit B, pp 3-5).
- (13) On September 11, 2012, Claimant underwent a pulmonary function test on behalf of the Disability Determination Service. Claimant's FVC indicated a

mild restriction with no improvement after bronchodilator. Best: FVC: 3.35, FEV1: 2.69. (Department Exhibit A, pp 6-8).

- (14) Claimant is a 49 year old man whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 220 lbs. Claimant has a high school equivalent education and last worked in 2010.
- (15) 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 shortness of breath, daily self catheterization, bronchospastic coughing, tremors 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 2010; 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 and mental 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 cashier and cleaning hospital rooms and transporting patients 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 May 10, 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 May 10, 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 4, 2013

Date Mailed: February 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:

