

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

IN THE MATTER OF:



Reg. No.: 2013-11865
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: February 27, 2013
County: Baraga

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong on behalf of Suzanne Morris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the 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 February 27, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [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 May 13, 2013, the SHRT found Claimant was approved for Social Security Disability benefits on 3/13/13 and is currently in payment status. Therefore, MA-P/Retro-MA is approved effective 2/2013 due to Claimant having attained the age of 55. Prior to age 55, vocational rule 202.13 applies and directs a decision of not disabled. As a result, MA-P benefits are approved effective 2/2013 and retroactive MA-P is denied. 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 Medicaid and Retro/MA?

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 25, 2012, Claimant applied for MA and Retro-MA.

- (2) On August 9, 2012, the Medical Review Team denied Claimant's application for lack of duration. (Depart Ex. A, p 1-2).
- (3) On August 14, 2012, the department caseworker sent Claimant notice that MA/Retro-MA had been denied.
- (4) On November 13, 2012, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA action.
- (5) On January 10, 2013, the State Hearing Review Team again denied Claimant's application indicating that Claimant was capable of performing a wide range of simple, unskilled, medium work. (Depart Ex.B, p 1-2).
- (6) Claimant has a history of dyspnea, fatigue, chronic obstructive pulmonary disease (COPD), gastroesophageal reflux disease (GERD), back pain, stomach problems, hypertension, dyslipidemia, myocardial infarction, acute coronary syndrome, post stenting of the mid right coronary artery, depression and anxiety.
- (7) On February 16, 2012, Claimant saw his primary care physician complaining of chest pain. Chest x-rays were negative. His physician believed the long term chest pain could be stress related as Claimant was getting more depressed. He was started back on Cymbalta. (Depart Ex. A, p 43, 70).
- (8) On March 5, 2012, a CT Abdomen found the lung bases are clear but have hyper-aerated compatible with air trapping and COPD. The liver contains several small hepatic cysts, the largest of which measures approximately 7 mm in diameter. There was also dense atherosclerotic calcification of the aorta without aneurysmal dilation or dissection. (Depart Ex. A, p 72-73).
- (9) On March 8, 2012, Claimant went to the emergency department with complaints of substernal chest discomfort and presyncope. Chest x-ray was negative. Electrocardiogram showed a sinus bradycardia, T-wave inversion, and across the precordial leads with significant ST depression in 3 through V6. He was transferred to the hospital. He stated he has had some atypical chest pain for quite some time. However, he developed more severe left-sided chest discomfort with sweats, weakness, and shortness of breath. He had ST depression rather diffusely, but more prominent in the inferolateral distribution. He was given aspirin, Plavix, Lovenox, Morphine, and some nitrates. His electrocardiograms improved and he was transferred to another hospital. His troponin did go up to 1.57 with a small non-ST segment myocardial infarction. He was brought to the Catheterization Laboratory and his right coronary artery had a high-grade 90+% stenosis with some clots. The left coronary artery has mild disease.

His overall left ventricular systolic function is normal. An aspiration thrombectomy was performed, then stenting of the mid right coronary artery. It is post dilated to 4.2 millimeters. There was a good result with no residual stenosis and prompt flow was seen. His cholesterol was 219; LDL was high at 161 and his HDL was quite low at 29. After his procedure, his creatinine and potassium were 0.7 and 3.7 respectively. His hemoglobin was 12.4 with normal indices and platelets were 231,000. He was discharged on March 10, 2012, on Cymbalta and Seroquel as before with the addition of Aspirin, Plavix, Simvastatin, and Toprol. He will also need combination therapy because of his low HDL's. (Depart Ex. A, p 8-38).

- (10) On May 9, 2012, Claimant underwent a Nuclear Medicine stress test. There was evidence for stress induced stress test. The results showed no evidence of stress induced ischemia. Symptoms of chest pain were reported but were unassociated with EKG changes. (Depart Ex. A, p 76-77).
- (11) On November 12, 2012, Claimant underwent a Cardiolite stress test. The test was terminated based on exertional dyspnea. He exercised for 10 minutes and came close, but just shy of his target heart rate. He had dyspnea on exertion and fatigue, but no angina symptoms. EKG tracing showed no acute ST depression or arrhythmias. He had hypertensive response to exercise towards the end of the study and a normal return of vital signs after two minutes. Results showed a likely normal Cardiolite stress test. There is some motion artifact on both stress and rest images that affects a small portion of the left ventricular apex but overall the apex also appears normal. There are normal gated images with an ejection fraction of 71%. (Depart Ex. B, p 3-7).
- (12) Claimant is a 55 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 175 lbs. Claimant graduated from high school. Claimant last worked in September, 2009.
- (13) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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).

Disability is defined as 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(a). 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 such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). 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.

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 limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In Claimant's case, the ongoing depression, pain, shortness of breath and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her 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 September, 2009; 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 her 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 medical findings, that Claimant cannot return to his past relevant work because the rigors of working in construction are completely outside the scope of his physical and mental 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 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.

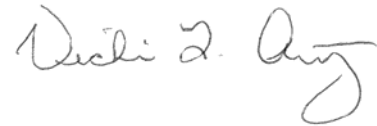
After careful review of Claimant's medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work 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). Based on Claimant's vocational profile (advanced age, Claimant is 55, has a high school education and unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.04 as a guide. Consequently, the department's denial of her January 24, 2012, 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 the department shall process Claimant's May 25, 2012, 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. Continued review is not necessary due to Claimant's grant of Social Security Disability.

It is SO ORDERED.



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

Date Signed: June 3, 2013

Date Mailed: June 3, 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.

2013-11865/VLA

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:

