

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-12491
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 7, 2013
County: Jackson

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistance Payment Supervisor [REDACTED] [REDACTED] and Assistance Payment Worker [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) 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 October 1, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On November 8, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that her non-severe impairment lacked duration.
- (3) On November 13, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On November 26, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On January 22, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the ability to perform light exertional tasks of a repetitive nature. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of rheumatoid arthritis, chronic arthritis, degenerative disc disease, ruptured right rotator cuff, osteoarthritis, sleep apnea, and high blood pressure.
- (7) On March 1, 2012, Claimant underwent a bone density axial skeleton test and was diagnosed with osteopenia. (Claimant Ex. A, pp 11-12).
- (8) On April 12, 2012, Claimant's lumbar spine MRI shows multilevel degenerative changes present throughout the lumbosacral spine , with notable progression of disc degeneration at L1-L2 and L2-L3 levels and of degenerative facet arthropathy at L4- L5 since 2003. There is more advanced chronic degenerative disc disease at L3- L4 and more advanced hypertrophic degenerative facet arthropathy at L4-L5. There is a small disc protrusion/herniation along the left posterior lateral disc at L1-L2 which results in a mild compromise of the inferior left L1-L2 neural foramen. There is also a small disc protrusion/herniation of the right posterior disc at L1-L2, with very mild effacement of the right lateral recess. There is an asymmetric disc bulge or broad protrusion of the left posterior lateral disc at L2- L3, with mild narrowing of the left L2-L3 neural foramen. There is also bone marrow edema indicative of a stress reaction in the posterior pedicles and pars interarticularis bilaterally at L4. There is a similar stress reaction in the right posterior pedicle of L5, also minimally in the left posterior pedicle and posterior elements of L4. (Claimant Ex. A, pp 4-5).
- (9) On September 1, 2012, an MRI of Claimant's right shoulder shows a fracture of the right humerus with bone marrow edema, a torn supraspinatus tendon with retraction x 2.8 cm, and a torn infraspinatus tendon. The MRI also shows moderate joint effusion and a torn retracted biceps long head tendon. The labrum is intact. (Claimant Ex. A, pp 9-10).
- (10) On September 20, 2012, Claimant followed up with her orthopedist 12 weeks status post right proximal humerus fracture. The MRI shows a proximal humerus fracture nonunion and a massive rotator cuff tear. The entire rotator cuff was torn and retracted her subscapularis tendon is gone completely atrophied and retracted back glenoid rim as well as superior cuff she has arthritic changes. The orthopedist recommended a reverse shoulder replacement that would take care of the rotator cuff tear, proximal humerus fracture and arthritis. (Depart Ex. A, pp 33-34).

- (11) On October 22, 2012, Claimant's treating physician completed a Medical Needs form on Claimant. Claimant is diagnosed with hypertension, rheumatoid arthritis, general osteoarthritis, lumbar disc degeneration, depression, and anxiety disorder. Claimant's treating physician opined that Claimant could not work at her usual occupation or at any other job. (Depart Ex. A, pp 26-27).
- (12) On October 23, 2012, Claimant underwent a medical examination on behalf of the department. Claimant is diagnosed with hypertension, rheumatoid arthritis, disc degeneration, depression, hypercholesterolemia, and general osteoarthritis. The examining physician opined that Claimant's condition is stable. (Depart Ex. A, pp 11-12).
- (13) On October 23, 2012, Claimant's orthopedist completed a medical examination of Claimant. Claimant is diagnosed with a fracture proximal humerus. The orthopedist opined that Claimant's condition is deteriorating and she needs surgery. (Depart Ex. A, pp 13-14, 18-19).
- (14) On October 26, 2012, Claimant underwent a psychological evaluation on behalf of the [REDACTED]. Claimant alleged disability due to rheumatoid arthritis, osteoarthritis, bursitis, tendinitis, hypertension, sciatica, degenerative disc disease, obstructive sleep apnea, and anxiety. The examining psychologist opined that Claimant presented with generalized anxiety and fairly severe depression. Her prognosis is poor because she has been chronically depressed and anxious and needs psychiatric management and mental health therapy. Diagnosis: Axis I: Generalized anxiety disorder; Major depressive disorder, recurrent, severe; Axis III: Medical/Physical conditions; Axis IV: Psychosocial and environmental problems; Axis V: GAF=50. (Depart Ex. B, pp 3-13).
- (15) Claimant is a 52 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 180 lbs. Claimant completed high school.
- (16) 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 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 to 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 need for shoulder replacement surgery, chronic pain, and other non-exertional symptoms she 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 January, 2012; 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 the 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 her past relevant work because the rigors of working as a certified nurses aid are completely outside the scope of her 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 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 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 (approaching advanced age,

Claimant is 52, has a high school equivalent education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA are approved using Vocational Rule 201.14 as a guide. Consequently, the department's denial of her October 1, 2012, MA/Retro-MA application cannot be upheld.

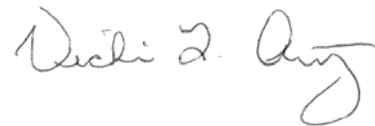
DECISION AND ORDER

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:

1. The department shall process Claimant's October 1, 2012, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in March, 2014, unless her 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 her continued treatment, progress and prognosis at review.

It is SO ORDERED.



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

Date Signed: March 22, 2013

Date Mailed: March 25, 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:

