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

IN THE MATTER OF:



Reg. No.: 2013-15224 Issue No.: 2009; 4031

Case No.: Hearing Date:

March 20, 2013

County: Berrien

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge upon the Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a nd appeal process. After due notice, a telephone hearing was commenced from Lansi ng, Michigan. Claimant personally appeared and testified. Participants on behalf of the D epartment of Human Services (Department) included Assistant Payment Supervisor

ISSUE

Whether the Department of Human Serv ices (the department) properly denied Claimant's application for Medical Ass istance (MA-P), Retro-MA and State Dis ability 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 August 10, 2012, Claimant appl ied for MA-P, Retro-MA and SDA benefits.
- (2) On November 19, 2012, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA and SDA appl ication indicat ing Claimant was capable of performing other work, pursuant to 20 CFR 416.920(f). (Depart Ex. A, pp 1-2).
- (3) On November 26, 2012, the department caseworker sent Claim ant notice that his application was denied.
- (4) On November 30, 2012, Claimant f iled a request for a hearing t o contest the department's negative action.

- (5) On January 31, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform light work. SDA was denied due to lack of duration. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of lumbar radiculopathy, hypertension, dy sthymic disorder, depression, and anxiety.
- (7) Claimant is a 31 year old man whose birthday is Claimant is 5'7" tall and weighs 240 lbs. Claimant completed a high schoo I equivalent education and last worked in July, 2012.
- (8) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity 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 Bridges Reference Manual (RFT).

In order to receive MA benefits based upon disa bility or blindness, claimant must be disabled or blind as defined in T itle 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 progr am designated to help public assistance claimants pay their medical expenses. Mi chigan 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 subs tantial gainful activ ity by reason of any medically dete rminable physical or mental impairment which c an be expect ed to result in death or which has lasted or can be expect ted 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 shequential 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, educati on 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 CF R 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 dis abled 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 deat h? 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 clie nt'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 analys is continues to Step 5. Sections 200.00-204.00(f)?
- 5. Does the client hav e the Residual Func tional 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 consider s 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 a pproved. 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 im pairment(s) and how seve re 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 di sease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not al one 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). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Sy mptoms** are your own description of your physical or mental impairment. Y our statements alone are not enough to establish t hat there is a physic al 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 clinic al diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicates pecific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientat ion, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, phy siological, or psychological phenomena which can be shown by the use of a medically accept able laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.),

roentgenological studies (X -rays), and psychologic al tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capac ity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found dis abled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demons trable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analys is herein, Claimant is not ine ligible 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 min imus* standard. Ruling a ny 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 analys is continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f).

In this case, this Administrative Law Judg e finds that Claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applie s the biographical data of the applic ant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole rec ord, this Administrative Law Judge finds that Claimant c ould not do a full range of even sedentary work pursuant to Medical Vocational Grid Rule Footnote 201.00(h) due to multiple impairments and his continued

lumbar radiculopathy from an L3-L4 broad based central disc protrusion effacing the ventral thecal sac and abutting the ventral intrathecal nerve roots.

Claimant testified that he needs additional back surgery in the form of a fusion and/or a disc replacement and his phys ician has taken him off work pending the surgery. This evidence, as already noted, does rise to statutory disability. It is noted that at review Claimant's current medical records, if he has not already received a fully favorable decision from SSA, will be assessed as controlling with regards to continuing eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof 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 August 10, 2012, MA/Retro-MA and SDA application, and shall awar d 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 rev iew Claimant's medica I cond ition for improvement in April, 2014, unless hi s Social Sec urity Administration disability status is fully 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.

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

Date Signed: April 11, 2013

Date Mailed: April 12, 2013

NOTICE: Administrative Hearings may or der 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 Hear ings 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 ti mely 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 <u>MAY</u> be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical erro r, 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

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