

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-22308  
Issue No.: 2009; 4031  
Case No.: [REDACTED]  
Hearing Date: June 12, 2013  
County: Genesee-06

**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, an in-person hearing was commenced on June 12, 2013, at the Genesee County DHS office. Claimant, represented by [REDACTED], personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

**ISSUE**

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA 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 August 8, 2012, Claimant filed an application for MA-P, Retro-MA and SDA benefits alleging disability.
- (2) On September 21, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating he is capable of performing other work. SDA was denied due to lack of duration. (Depart Ex. A, pp 3-4).
- (3) On September 26, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On December 10, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On March 13, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light exertional tasks of a simple and repetitive nature. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of right elbow fracture and closed head injuries.
- (7) On January 24, 2012, Claimant had a psychological evaluation on behalf of the Disability Determination Service. Claimant stated that since the car accident in December, 2010, he has less focus, anxiety attacks, insomnia, nightmares, severe headaches, severe ear aches and dizziness. He is unable to get along with other people and cannot maintain concentration. Claimant was casually dressed. His grooming appeared appropriate. He emitted a strong body odor. He seemed to be in contact with reality throughout the examination. His psychomotor activity level appeared to be normal. His affect was appropriate to his mood. His emotional state appeared to be anxious. He seemed quite agitated when he arrived. The psychologist opined that Claimant is capable of understanding, attending to, remembering, and carrying out instructions related to unskilled work related activities. Psychological testing would be necessary to more accurately assess his abilities to carry out these functions with detailed instructions. He reported having problems focusing. No test scores were available, but it was not the psychologist's impression that these problems would significantly interfere with the completion of unskilled work related behaviors. His abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace is moderately impaired. (Depart Ex. A, pp 29-32).
- (8) On February 16, 2012, Claimant underwent a medical examination on behalf of the [REDACTED]. Claimant's chief complaints were spine, earaches and closed head injuries. Claimant has a history of multiple closed-head injuries which he attributes to three motor vehicle accidents. Claimant appeared somewhat delayed with answering questions. He appeared older than his stated age. He appeared in mild discomfort. He was cooperative in answering questions and following commands. His insight and judgment were appropriate. He provided a good effort during the examination. The physician opined that Claimant's most significant impairment is his closed-head injuries. Claimant continues to have problems with memory, concentration and insomnia; and a neuropsychiatric examination would be helpful. He is not undergoing any treatment at present. In regards to his cervical and lumbar spine, he did have moderate deterioration to the lumbar spine and did have a nondermatomal sensory loss in the left leg, but his power was normal. He did have mild difficulty in orthopedic maneuvers such as squatting and standing on either foot, but this appeared to be more to do with balance. Physically, his degree of impairment does appear mild but not actively declining. Prognosis is fair. A neuropsychiatric evaluation in

regards to his closed-head injuries would be indicated. (Depart Ex. A, pp 24-28).

- (9) On September 14, 2012, Claimant's treating chiropractor completed a medical examination of Claimant. Claimant is diagnosed with acute traumatic subluxation complex of C5 associated with cervicalgia, myodysneuria and radiculopathy. His gait is slow antalgic lean to left. His grip strength is decreased and he cannot button clothing. His hands and fingers are numb. His memory is poor and he has mood swings. The chiropractor opined that Claimant's condition is deteriorating and he is unable to meet his needs in the home. (Depart Ex. A, pp 1-2).
- (10) Claimant is a 51 year old man whose birthday is [REDACTED] Claimant is 5'11" tall and weighs 145 lbs. Claimant completed a high school equivalent education.
- (11) 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).

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 Mich Admin Code, Rules 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.

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 and unpredictable seizures, 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 2001; 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). Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

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 (6<sup>th</sup> 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.

In this case, both an independent medical physician and Claimant’s chiropractor opined that Claimant has problems with his memory, spine and gait. A second independent medical examination found Claimant’s ability to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace is moderately impaired. And Claimant’s chiropractor opined that Claimant’s condition is deteriorating and he is unable to meet his needs in the home.

After careful review of Claimant’s medical records 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 advance age, Claimant is 51, has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's MA, Retro/MA and SDA are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of his August 8, 2012, MA/Retro-MA and SDA application cannot be upheld.

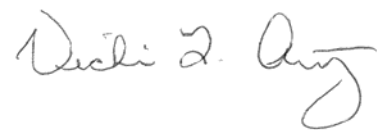
**DECISION AND ORDER**

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 August 8, 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 June, 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.

It is SO ORDERED.



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

Date Signed: June 13, 2013

Date Mailed: June 13, 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:

