

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-240
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 10, 2013
County: Ottawa

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, a telephone hearing was commenced on January 10, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [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 February 19, 2013, the SHRT found Claimant was not disabled. 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 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/Retro-MA benefits alleging disability.
- (2) On September 4, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA for lack of duration. MRT approved Claimant's application for SDA. (Dept Ex. A, pp 1-2).

- (3) On September 11, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On September 21, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On November 1, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of torticollis, spondylosis, neural foraminal stenosis, neuralgia, anxiety, hypercholesterolemia, hypertension, hypokalemia, Raynaud's syndrome, and depression.
- (7) On August 12, 2011, x-rays of Claimant's cervical spine revealed normal alignment of the vertebrae. There was degenerative spurring and mild narrowing at the C5-C6 and C6-C7 levels. The atlantoaxial facet joint was normal. There was uncovertebral spurring and bilateral C6-C7 neural foraminal stenosis. He was diagnosed with spondylosis in the lower cervical spine and C6-C7 neural foraminal stenosis. (Depart Ex. A, p 60).
- (8) On August 19, 2011, x-rays of Claimant's cervical spine showed diffuse bulging of the C6-C7 disc. There was no central spinal stenosis or cord compression. There was moderate narrowing of the left neural foramen and mild to moderate narrowing of the right neural foramen due to degenerative changes. MRI of the cervical spine without contrast revealed discogenic degenerative changes of the cervical spine including bilateral narrowing of the neural foramina. No significant focal disc herniation was seen and there was no central spinal stenosis or cord compression. (Depart Ex. A, pp 56-59).
- (9) On January 19, 2012, Claimant presented to his primary care physician with neck pain and the sudden onset of a visual disturbance. Claimant was diagnosed with muscle spasms in his neck and a suspected migraine, although Claimant does not have hypertension and lipids. An MRI was suggested, but Claimant cannot afford it. Claimant was prescribed Flexeril. (Depart Ex. B, pp 3-5).
- (10) On July 31, 2012, Claimant returned to his orthopedist for a recheck of his left shoulder. Claimant is having increasing discomfort with his left upper extremity and is developing weakness in his left lower extremity. He claims that his left upper extremity is less functional following physical therapy. He believes that his nerve in his neck is being pinched and this is causing him to develop weakness in his left lower extremity as well. He was

unable to perform the duties of his job so he was terminated. Reflexes are +2/4 patella and Achilles bilateral lower extremities. Reflexes are +2/4 biceps, triceps, brachioradialis bilateral upper extremities. There is global weakness of his left upper extremity compared to his right. The orthopedist opined that he did not believe that his left upper extremity weakness is secondary to the biceps tendon injury and he did not believe that physical therapy would be of any significant benefit until Claimant has his neck evaluated. The orthopedist referred Claimant back to his primary care physician for a referral to a spine surgeon. (Depart Ex. A, pp 19-21).

- (11) On August 6, 2012, Claimant's treating physician completed a medical examination report indicating Claimant was diagnosed with Torticollis, but he was unable to give a clinical impression of Claimant's current condition because he had not seen him since 1/19/12. (Depart Ex. A, pp 13-14).
- (12) On September 7, 2012, Claimant was admitted to the hospital for symptoms of depression and suicidal thoughts. He was placed on Neurontin to try to help with pain. He declined to be on antidepressant medication. During his physical examination, he was in no acute respiratory distress and did not appear to be in pain. His gait and range of motion were within normal limits. His strength was within normal limits except for some weakness of the left arm with the bicep muscle. He was able to walk heel-to-toe, heel-to-shin was normal and alternating hand movements were within normal limits. Drug screen was positive for THC. He was diagnosed with degenerative disc disease with chronic neck pain, left-sided weakness of arm and leg, daily tension headaches secondary to degenerative disc disease, hypertension, hypokalemia, hyperlipidemia, bicep tendon rupture, hypernatremia, refractive error-corrected, and possible conversion disorder or possible history of CVA. However, admission studies did not correspond with this and the physical exam clinically did not show any evidence of left-sided weakness except for the bicep muscle due to rupture. Based on the exam, he was found physically stable. On 9/9/12, Claimant was evaluated for stroke like symptoms. Claimant reported that on 9/8/12, he had some numbness and tingling on the left side of his face and hands. Claimant's strength, DTRs and neurological checks were all within normal limits. His facial expressions were symmetric. His cranial nerves 2-12 were grossly intact. He had no symptoms of numbness or tingling. The examining physician opined that Claimant's symptoms were relieved by reassurance and rest and may be somewhat related to anxiety and concerns. Claimant was again psychologically evaluated on 9/11/12, and at that time he was doing better. He was denying thoughts of suicide. It was felt he

had stabilized sufficiently that he could be safely discharged. He was discharged on 9/11/12 in improved condition with a diagnosis of: Axis I: Major depressive disorder, recurrent; Cannabis abuse; Axis III: Back pain; Axis IV: Financial stress; Axis V: Admission GAF=10; Discharge GAF=44. Prognosis was fair. (Depart Ex. C, pp 7-31).

- (13) Claimant is a 51 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 180 lbs. Claimant completed high school.
- (14) Claimant had applied for 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 ongoing pain and depression 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 July, 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 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 hanging drywall 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 (approaching advanced age, Claimant is 51, has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of his 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 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 March, 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.

/s/

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

Date Signed: March 13, 2013

Date Mailed: March 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

2013-240/VLA

VLA/las

cc:

