

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

**IN THE MATTER OF:**



Reg. No.: 2013-276  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: January 8, 2013  
County: Ingham

**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, an in-person hearing was commenced on January 8, 2013, at the Genesee County DHS office. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Lead Worker [REDACTED].

**ISSUE**

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA benefits?

**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 April 27, 2012, Claimant applied for MA-P/Retro-MA.
- (2) On June 22, 2012, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA application due to lack of duration. (Department Exhibit A, pp 1-2).
- (3) On July 3, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On September 24, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On October 29, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA indicating the medical evidence of record indicates that Claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of his admission. (Department Exhibit B, pp 1-2).
- (6) Claimant alleges disability based on a history of a spinal cord injury, liver problems, bilateral cataracts, gastric ulcers, mild gastritis, hepatitis C, and thrombocytopenia.
- (7) On March 22, 2012, Claimant was brought to the emergency department after being found down, presumably from a fall. Claimant reported having drunk several beers and a pint of vodka, as well as using marijuana prior to his fall. He also reported numbness in his feet bilaterally, as well as numbness and tingling in his right upper extremity. CT of the chest, abdomen and pelvis showed chronic-appearing changes, including degenerative changes at the L5-S1 level with spondylolisthesis. The CT of the head was negative for any acute findings. The CT of the cervical spine showed degenerative changes, more prominent at the C1-C2, C5-C6, and C6-C7 levels. An MRI of the spine was obtained. This showed no acute fractures or spinal stenosis in the lumbar region. There was a right paracentral disc herniation at the L1-L2 level. MRI of the cervical spine showed contusion of the C5 to C7 level with ligamentous injury of the anterior longitudinal ligaments and interspinous ligaments at the C5-C6 and C6-C7 levels. There was mild retrolisthesis of the C6 on C7. No hematoma or fractures noted. Claimant was admitted to ICU for observation and a neurosurgery consult. Claimant was discharged on March 27, 2012, with pain control medication and a walker. His discharge diagnosis was a history of hepatitis C and alcohol abuse, spinal cord contusion and ligamentous injury at C5-C7 levels. (Department Exhibit A, pp 17-22).
- (8) On April 30, 2012, Claimant's complete transabdominal ultrasound revealed an echogenic appearance to the liver consistent with fatty infiltrative change and/or hepatocellular disease. The gallbladder was contracted with suggestion of diffuse wall thickening measuring 5mm. There were several subcentimeter non mobile gallstones. The right kidney measured 10 x 5 cm, while the left kidney measured 11 x 6 cm. (Claimant Exhibit A, pp 37-38).
- (9) On July 12, 2012, Claimant underwent a medical evaluation by the [REDACTED] [REDACTED] [REDACTED]. Claimant had a history of kidney stones, ethanol and substance abuse with an episode of passing out for an undetermined length of time in April, 2012, now with neck and low back pain and bilateral upper and lower extremity numbness. Claimant stated he also had bilateral cataracts and his last eye exam was six years ago.

The examining physician opined that Claimant was able to walk on heels and toes and could tandem walk and stand on either leg alone. He ambulated with a normal gait with no limp and the clinical evidence did not support the need for a walking aid. (Department Exhibit B, pp 3-9).

- (10) On August 7, 2012, Claimant saw a specialist to follow-up on his thrombocytopenia. A EGD was performed revealing gastric ulcers, mild gastritis, duodenitis in the bulb of the duodenum, and portal hypertensive enteropathy secondary to End Stage Liver Disease. (Claimant Exhibit A, pp 3-6).
- (11) On October 29, 2012, was transported to the emergency department by ambulance after a fall as an outpatient that his legs buckled and he felt like he was unable to walk. Weakness has been a chronic problem since his fall in March, 2012. On evaluation in the ED, he was admitted for further evaluation of his chronic weakness. He was seen by occupational therapy and was ambulating the hallways with a walker. He had sensory deficits in his bilateral lower extremities and tissue texture abnormalities of the cervical spine in C3-C7. He had tenderness to palpation to his lumbar spine. A CTA of the chest, abdomen and pelvis found changes consistent with cirrhosis, cholelithiasis. There was also gallbladder wall thickening. This may be related excess to his hypoproteinemia state due to cirrhosis, cholecystitis cannot be excluded. He had small volume ascites. He had mild wall thickening of a few loops of the small bowel in the right lower quadrant. There was a single too small to characterize hypodensity lesion within each kidney that were nonspecific and likely cysts. He also had bilateral spondylosis of L5 with issue was grade-1 anterior listhesis of L5 and S1 associated degenerative endplate and facet degenerative changes. The abdominal ultrasound showed coarsened liver echotextures with micronodular margins consistent with cirrhosis. Claimant was discharged on October 31, 2012, with a diagnosis of generalized weakness secondary to cervical disk disease, alcoholic cirrhosis and thrombocytopenia. (Claimant Exhibit A, pp 45-51).
- (12) Claimant is a 61 year old man whose birthday is [REDACTED] Claimant is 5'2" tall and weighs 130 lbs. Claimant completed the ninth grade and last worked in February, 2012.
- (13) Claimant was appealing the denial for 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 and unpredictable falls, back pain, use of a walker, 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 February, 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 his past relevant work because the rigors of working as a commercial fisherman 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 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.

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 retirement age, Claimant is 61, completed the ninth grade and an unskilled work history), this Administrative Law Judge finds Claimant's MA and Retro/MA are approved using Vocational Rule 203.02 as a guide. Consequently, the department's denial of his April 27, 2012, MA and 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 April 27, 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 January, 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/

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

Date Signed: January 29, 2013

Date Mailed: January 29, 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:

