

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-28558
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 16, 2013
County: Kalkaska

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 May 16, 2013, at the Kalkaska County DHS office. Claimant, and his wife, personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Specialist [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 August 17, 2012, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On December 7, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating Claimant was capable of performing other work. (Depart Ex. A, pp 11-12).
- (3) On December 14, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On February 7, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 19, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of unskilled work. (Depart Ex. B).
- (6) Claimant has a history of post-traumatic stress disorder, panic attacks, antisocial disorder, severe anxiety disorder, arthritis, attention deficit hyperactivity disorder, degenerative disc disorder, irritable bowel syndrome, insomnia and a hernia.
- (7) March 1, 2012, Claimant's treating psychologist completed an evaluation of Claimant. Claimant appeared his stated age. His gait on arrival was steady and without observed anomaly but on departure there was a noticeable right side limp as he favored his right leg. Claimant acknowledged that this was a regular occurrence after sitting for a while. He appeared quite nervous and moderately agitated with fairly frequent wringing of the hands and constant bouncing of the right leg throughout the evaluation. He displayed a flat gaze that left one with the impression of significant uncertainty and distrust on his part. He was cooperative with all aspects of the evaluation. His fund of knowledge was quite poor. His insight into his own emotional functioning appears fair at best and judgment about the effects of his emotions on thinking and behaviors is poor. His mood however, was clearly anxious. Diagnostic impression: He presents with symptoms typically associated with PTSD. He also displays a more general, underlying type of anxiety about life and significant depression and a negative view about his prospects in life. His demonstrated memory problems are of some concern. Additionally, while his wish to isolation can be understood to some extent in the context of his life experiences, his history likewise shows a high level of chronic poor life decisions and choices that have certainly contributed to his present situation. His true intellectual capabilities, as of moment in time, are essentially unknown. His emotional stability appears questionable. Diagnoses: Axis I: Post-traumatic Stress Disorder; Generalized Anxiety Disorder; Major Depression, recurrent, moderate; Cognitive Disorder; Axis II: Personality Disorder; Axis III: Pinched nerve in back; Chronic Pain; IBS; Axis IV: Severe; Axis V: GAF= 50. Prognosis is poor. According to his Mental Residual Functional Capacity Assessment, Claimant was markedly limited in his ability to understand and remember detailed instructions, carry out detailed instructions or work in coordination with or proximity to others without being distracted by them. (Depart Ex. A, pp 51-57).
- (8) On September 15, 2012, Claimant had a neurological consultation. Claimant started with back trouble when he was 17 years of age. He has had pain intermittent in his back for a long period of time, which tends to be more on the left than the right. He has a positive straight leg raise maneuver with positive dorsiflexion test. He walks tilted forward by about

20 degrees. He has significant paravertebral muscle tightness. His deep tendon reflexes are hypoactive in the lower extremities. He was referred for an MRI. (Depart Ex. A, pp 37-38).

- (9) On September 28, 2012, Claimant underwent a psychological evaluation by his treating psychologist. Claimant's mood was frustrated but pleasant. He has an adequate fund of information, intact memory processes, oriented to person, place, time, situation and reality. His insight and judgment are fair. Diagnosis: Axis I: Mood Disorder; Post-traumatic Stress Disorder; ADHD, combined type; Axis III: GERD, IBS, Back pain; Axis V: GAF=45. (Depart Ex. A, pp 39-44).
- (10) September 28, 2012, Claimant's treating physician completed a medical examination of Claimant on behalf of the Friend of the Court. Claimant was diagnosed with PTSD, Personality Disorder, ADHD and degenerative joint disease in the lumbar spine. The physician opined that Claimant's is unable to work at this time. (Depart Ex. A, p 46).
- (11) On October 1, 2012, an independent physician completed a form regarding disability on behalf of Friend of the Court. Claimant was diagnosed with PTSD, generalized anxiety disorder and major depression. The examining physician opined that Claimant is unable to work in any capacity at this time for an unknown time. (Depart Ex. A, p 45).
- (12) Claimant is a 36 year old man whose birthday is [REDACTED] Claimant is 5'11" tall and weighs 185 lbs. Claimant completed high school.
- (13) Claimant was awaiting the results of his Social Security disability benefits hearing at the time of this hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title 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 program designated to help public assistance claimants pay their medical expenses. Michigan 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 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.

The federal regulations require that several considerations be analyzed in sequential 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, education 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 CFR 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 disabled 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 death? 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 client'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 analysis continues to Step 5. Sections 200.00-204.00(f)?

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? This step considers 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 approved. 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 impairment(s) and how severe 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 ultrasounds, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone 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) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not

enough to establish that there is a physical 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 clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological 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 capacity 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 disabled 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 demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not eligible 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 minimus* standard. Ruling any 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 analysis 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 ALJ 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 applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). 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 a careful review of the credible and substantial evidence on the whole record, 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).

In this case, Claimant's treating physician and an independent medical physician completed medical examinations of Claimant and opined that he is unable to work at this time. An independent neurologist indicated Claimant has had back trouble since he was 17 years of age. He has had intermittent pain in his back for a long period of time, which tends to be more on the left than the right. He has a positive straight leg raise maneuver with positive dorsiflexion test. He walks tilted forward by about 20 degrees. He has significant paravertebral muscle tightness. His deep tendon reflexes are hypoactive in the lower extremities. Regarding his mental impairments, Claimant exhibits symptoms typically associated with PTSD. His emotional stability is questionable. According to his Mental Residual Functional Capacity Assessment, Claimant is markedly limited in his ability to understand and remember detailed instructions, carry out detailed instructions or work in coordination with or proximity to others without being distracted by them.

This evidence, as already noted, does rise to statutory disability. It is noted that at review Claimant's medical records will be assessed as controlling with regards to continuing eligibility.

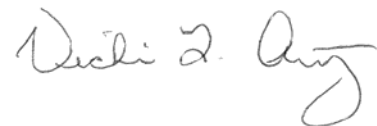
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and 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 August 17, 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 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.



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

Date Signed: June 7, 2013

Date Mailed: June 7, 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:

