

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-9631
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 5, 2013
County: Kalkaska

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 March 5, 2013, in the Kalkaska County DHS office. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility 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 May 30, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On August 3, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of performing other work, pursuant to 20 CFR 416.920(f).
- (3) On August 13, 2012, the department caseworker sent Claimant notice that her application was denied.
- (4) On October 29, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On December 21, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the ability to perform simple a wide range of simple, unskilled, light work. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of insulin dependent diabetes, sciatica, fibromyalgia, migraines, chronic kidney disease, hypertension, gastroesophageal reflux disease (GERD), osteoarthritis, coronary artery disease, anxiety, depression, and bipolar disorder.
- (7) On April 9, 2011, Claimant presented to the emergency department with chest pain, status post coronary artery bypass graft. She was placed on continuous cardiopulmonary monitoring, oxygen, and a 12 lead EKG was performed. The EKG showed normal sinus rhythm without evidence of ST elevation or depression. Chest x-ray showed no evidence of acute active pulmonary disease. There were post operative changes consistent with previous sternotomy and coronary artery bypass surgery. Blood pressure was 97/44. She was released in stable condition with a diagnosis of noncardiac chest pain, hyperglycemia resolving, and insulin dependent diabetes mellitus. (Depart Ex. A, pp 138-140).
- (8) On June 27, 2011, Claimant underwent a mental status examination by the [REDACTED] [REDACTED] [REDACTED] Claimant alleged disability due to heart, kidney and back problems. The examining psychologist opined that Claimant reported a very traumatic childhood including significant abuse, neglect and witnessed many traumatic events. She endorsed weekly panic attacks which included sweating, crying and a racing heartbeat. She had a tendency to be socially withdrawn. Based on the exam, she would be able to communicate and interact effectively with co-workers, authority figures, or the public, but she may avoid social contact due to anxiety. She would be able to understand simple and complex instructions. Her ability to manage a normal amount of stress may be impaired due to anxiety. Diagnosis: Axis I: Anxiety disorder; Axis IV: Psychosocial stressors are severe including chronic health problems; Axis V: GAF=48. (Depart Ex. B, pp 3-8).
- (9) On June 30, 2011, Claimant was admitted to the hospital after falling and striking her forehead. When she presented to the emergency room she had had a witnessed tonic-clonic seizure with urinary incontinence. A CT scan of her brain was negative. Her blood sugar was 121 at the time. She was discharged on July 2, 2011, with a final diagnosis of postconcussional seizure, chronic back pain and diabetes mellitus. (Depart Ex. A, pp 90-95).

- (10) On February 10, 2012, Claimant was admitted for chest pain and blood sugars of 740. Her blood pressure was 90/60, pulse 100. She was fluid resuscitated and restarted on her insulin. Her blood sugars normalized. Renal function normalized. She underwent an adenosine Cardiolute stress test, which was negative. Chest x-ray was also negative. Claimant was discharged on February 12, 2012 with a diagnosis of acute atypical chest pain, uncontrolled diabetes mellitus, high-risk for progression of coronary artery disease, blindness, and acute renal failure secondary to diabetes, known coronary artery disease, status post coronary bypass grafting in 2006, three-vessel ischemic cardiomyopathy with an ejection fraction of 40-45%, history of seizures, and evidence of mild-to-moderate dehydration, acute renal failure, prerenal secondary to osmotic diuresis from uncontrolled diabetes mellitus as well as hydrochlorothiazide. (Depart Ex. A, pp 9-13).
- (11) On February 11, 2012, Claimant's echocardiogram revealed a normal left ventricular size, mildly diminished left ventricular function with an estimated ejection fraction of 40%. There was no chamber hypertrophy and a questionable wall motion abnormality at the apex and anterior hypokinesia. The right ventricle had normal size and function as well as the right and left atria. There was mild mitral, tricuspid and pulmonary valve insufficiency. She had a normal right ventricular systolic pressure of 34. There was no pericardial effusion, intracardiac mass, thrombus or shunt. (Depart Ex. A, pp 41-43).
- (12) On February 12, 2012, Claimant's myocardial scan with spect with adenosine showed a moderate to large sized perfusion defect involving the cardiac apex and anterior wall which was largely fixed. There was mild reversibility along the periphery of the perfusion defect. The scintigraphic findings were consistent with a moderate to large sized infarct with mild peri-infarct ischemia. There is also hypokinesia of the cardiac apex and anterior wall with mild paradoxical septal wall motion. The calculated left ventricular ejection fraction is 38%. (Depart Ex. A, pp 44-45).
- (13) Claimant is a 52 year old woman whose birthday is [REDACTED]. Claimant is 5'1" tall and weighs 155 lbs. Claimant completed high school and last worked in January, 2011 as a heavy equipment operator.
- (14) 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).

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 chest pain and uncontrollable diabetes, and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her 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 January, 2011; 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 her 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 her past relevant work because the rigors of working as a heavy equipment operator are completely outside the scope of her 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 (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 CF R 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 52, has a high school education and an semi-skilled work history), this Administrative Law Judge finds Claimant's MA, Retro/MA are approved using Vocational Rule 201.14 as a guide. Consequently, the department's denial of her May 30, 2012, MA/Retro-MA application cannot be upheld.

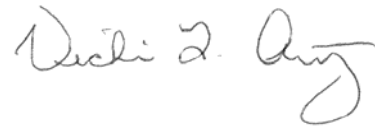
DECISION AND ORDER

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 May 30, 2012, MA/Retro-MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in March, 2014, unless her 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 her 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: March 21, 2013

Date Mailed: March 22, 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:

