

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-18361
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 10, 2013
County: Jackson

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 April 10, 2013, at the Jackson County DHS office. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED] and Assistant Payment Supervisor [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retroactive Medical Assistance (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 September 14, 2012, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On November 29, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant's physical impairments will not prevent employment for at least 12 consecutive months. (Depart Ex. A, pp 33-34).
- (3) On December 6, 2012, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On December 17, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On February 15, 2013, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating the medical evidence of record indicates Claimant's medical condition is improving/or is expected to improve within 12 months from date of onset or from the date of surgery. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of diabetes, pneumonia, hypertension, hyperlipidemia, gastroesophageal reflux disorder (GERD), renal failure , chronic anemia, neuropathy, mood disorder and personality disorder.
- (7) Claimant is a 49 year old man whose birthday is [REDACTED] Claimant is 5'7" tall and weighs 162 lbs. Claimant completed high school and currently works as a realtor earning an average of \$ [REDACTED] a month.
- (8) 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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he currently working part time as a realtor and earning an average of \$650.00 a month. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to diabetes, pneumonia, hypertension, hyperlipidemia, gastroesophageal reflux disorder (GERD), renal failure, chronic anemia, neuropathy, mood disorder and personality disorder.

On September 7, 2012, Claimant was admitted to the hospital with hypertension. He was intravascularly depleted and had hypotensive episodes which responded to intravenous saline. Claimant required dialysis at least 4 times with gradual return of renal function to a creatinine clearance of 29 the day prior to discharge. He weighed 181 at the time of admission and 167 on the day before he was discharged. His hospital stay was complicated by normochromic normocytic anemia believed due to his diabetic nephropathy, chronic hypertension which was managed with medication, diabetes type 2, which was uncontrolled and managed with initiation of Lantus and Humalog, intermittent fever which was due to atelectasis managed with ambulation and chronic pleural effusion due to fluid retention and hypoproteinemia following his acute renal failure which gradually improved. He underwent right renal biopsy. PA and lateral chest x-rays from 9/10/12 showed bilateral renal cysts. EKG from 9/9/12 showed sinus rhythm, with prolonged QT. Transthoracic echocardiogram from 9/10/12 showed normal LV size and function, trace tricuspid regurgitation, and moderate pulmonary hypertension as expected with his acute renal failure. He was discharged on 9/20/12 with diagnoses of acute renal failure due to hypotension due to acute gastroenteritis; acute lactic acidosis due to acute renal failure due to hypotension due to acute gastroenteritis and use of metformin, hyponatremia due to acute renal failure due to hypotension due to acute gastroenteritis, resolved; severe chronic renal diabetic nephropathy by biopsy, final pending; severe anemia due to acute lactic acidosis due to acute renal failure due to hypotension due to acute gastroenteritis and use of metformin, stable; chronic hypertension, controlled; diabetes mellitus, type 2, now insulin-dependent, uncontrolled; intermittent fever due to atelectasis, improved. On 9/8/12, a nephrologist consulted with Claimant for acute renal failure. The nephrologist noted that Claimant had a history of diabetes since age 30, however he had been noncompliant

with checking his sugars, seeing a doctor and getting his labs done. The endocrinologist during the consult on 9/9/12 indicated Claimant's type 2 diabetes was under terrible control at home as manifested by a hemoglobin A1c of 11.4. The endocrinologist indicated Claimant had been totally noncompliant with checking BMPs the last couple of years, not checking his blood sugars or sticking to a diet and exercise program. The endocrinologist was unable to opine that Claimant's acute renal failure was chronic or not because Claimant had not had his kidney's checked in a couple of years at least and it could be a chronic diabetic kidney disease with an acute exacerbation.

On October 30, 2012, Claimant met with his primary care physician to discuss his uncontrolled diabetes mellitus and diarrhea. Claimant was following up from his hospitalization and was referred to the diabetic center. He was instructed to continue with daily aspirin, Lantus and Novolog with sliding scale coverage.

On October 31, 2012, Claimant underwent an independent medical evaluation. Claimant was diagnosed with chronic diabetes mellitus type 2 with chronic renal failure, chronic hypertension, severe anemia with chronic renal failure, obesity, hyperlipidemia, and moderate pulmonary hypertension. Claimant looked tired and pale. The examining physician opined Claimant was improving and had no physical or mental limitations.

On December 14, 2012, Claimant visited his primary care physician concerning C. difficile colitis, edema and fatigue.

On January 4, 2013, Claimant saw his primary care physician for edema, weight loss and numbness of his fingers.

On February 15, 2013, Claimant underwent a physical examination. His blood pressure was 132/89. Edema was present on his lower legs with severe pitting of 1+.

On April 13, 2013, Claimant's primary care physician completed a medical examination report. Claimant was diagnosed with hypertension, diabetes and anemia. He was taking Novolog, Atenolol and Lantus. Claimant's treating physician opined Claimant's condition was stable and he was capable of lifting and carrying 10 pounds, standing and walking less than 2 hours a day and sitting 6 hours of an 8-hour work day. Claimant was noted to have no physical or mental limitations and found capable of meeting his own needs in the home.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to diabetes, pneumonia, hypertension, hyperlipidemia, gastroesophageal reflux disorder (GERD), renal failure, chronic anemia, neuropathy, mood disorder and personality disorder.

Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 6.00 (genitourinary impairments), Listing 9.00 (endocrine disorders), Listing 11.00 (neurological) and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and

sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant's prior and current work history consists of work as a realtor. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as skilled, light work.

Claimant testified that he is able to walk short distances and can lift/carry approximately 20-50 pounds. The objective medical evidence notes limitations in lifting no more than 10 pounds and the ability to stand or walk for only two hours a day. If the impairment or combination of impairments does not limit an individual's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, Claimant can be found able to return to past relevant work and is not disabled for purposes of the MA-P program at Step 4. If Claimant had not been found disabled at Step 4, Step 5 of the sequential analysis would be required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 49 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a Bachelor of Arts degree. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that the Claimant has the residual capacity to

substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

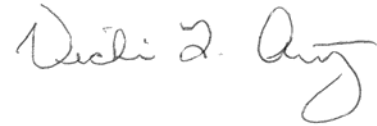
In this case, the evidence reveals that Claimant suffers from diabetes, pneumonia, hypertension, hyperlipidemia, gastroesophageal reflux disorder (GERD), renal failure, chronic anemia, neuropathy, mood disorder and personality disorder. The objective medical evidence notes limitations in standing and/or walking of 2 hours, and a 10 pound weight restriction for lifting and carrying. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.18, it is found that Claimant would be found not disabled for purposes of the MA-P program at Step 5, had he not already been found not disabled at Step 4.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant not disabled for purposes of the MA-P benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



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

Date Signed: July 8, 2013

Date Mailed: July 8, 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

2013-18361/VLA

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cc:

