

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-19633
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 11, 2013
County: Shiawassee

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 April 11, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] and Medical Review Team Worker [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) and Retro-MA application?

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 21, 2012, Claimant applied for MA and Retro-MA with the Michigan Department of Human Services (DHS).
2. On November 30, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that he had a non-severe impairment. (Depart Ex. A, pp 1-2).
3. On December 5, 2012, the department caseworker sent Claimant notice that his application was denied.
4. On December 11, 2012, Claimant filed a request for a hearing to contest the department's negative action.

5. On February 20, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled because the medical evidence indicated that Claimant retains the capacity to perform a wide range of light work. (Dept Ex. B).
6. Claimant is a 46 year old man whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 155 lbs. Claimant completed high school with special education classes.
7. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
8. Claimant testified that he does not drink alcohol, smoke cigarettes or use illegal drugs.
9. Claimant has a driver's license and can drive an automobile.
10. Claimant is not currently working. Claimant last worked in September, 2012.
11. Claimant alleges disability on the basis of atrial fibrillation, asthma, sleep apnea, irritable bowel syndrome, high cholesterol, depression, anxiety and low back pain.
12. On February 20, 2012, Claimant followed up with his cardiologist regarding his diagnoses for arrhythmia-atrial fibrillation, paroxysmal supraventricular tachycardia and shortness of breath. The cardiologist indicated the last time he saw Claimant was in 2008. At that time Claimant was doing well. Claimant was last seen in 2010 for atypical chest pain and a stress echocardiogram was performed showing it was completely normal with no evidence of ischemia. He had been doing well until January, 2012, when he had some episodes of atrial fibrillation, but since then he has been quiet. His EKG was normal during the office visit and his physical examination was within normal limits. (Dept Ex. A, pp 144-147).
13. On August 10, 2012, Claimant had an echocardiogram which showed a normal left and right ventricular function with an LVEF of 71%. He also had trace pulmonic valve regurgitation and normal wall motion of all segments at rest. (Dept Ex. A, pp 142-143).
14. Claimant went to the emergency room on December 9, 2012, after drinking and ingesting a bottle of pills. His initial blood alcohol level was 0.250. He was in mild distress, tearful and sad. He was discharged home on December 10, 2012, with a diagnosis of alcohol intoxication and instructed to follow up with [REDACTED]. (Dept Ex. C, pp 8-17).

15. On January 9, 2013, Claimant was hospitalized for acute bronchitis and asthma exacerbation. He stated he was doing well when he developed chest pain which woke him up. He took nitroglycerin and felt well, he fell back to sleep and woke again with chest pain. He was wheezing when he arrived at the emergency room and was given a breathing treatment. He was not using his CPAP treatment because he cannot afford it. Myocardial infarction was ruled out with serial EKGs and enzymes. He was admitted for bronchitis. He improved and was sent for a stress test which was within normal limits. He was discharged in stable condition on January 11, 2013. (Dept Ex. C, pp 52-53).
16. On March 7, 2013, Claimant underwent an independent psychological evaluation. Claimant stated he was unable to work secondary to his physical limitations. The psychologist opined that Claimant's abilities to understand, remember and carry out simple instructions appeared to be moderately to severely impacted, as well as his abilities to respond appropriately to others, including supervisors and co-workers and to adapt to changes in a work setting. His ability to perform work related activities, despite alleged impairments, in a reliable, consistent, and persistent manner was also moderately to severely impacted. Diagnosis: Axis I: Major depression, recurrent, moderate; Generalized anxiety disorder, with history of panic disorder; Learning disorder; Cognitive disorder; Stress exacerbating somatic symptoms; Chronic pain with psychological factors and reported general medical conditions; Breathing related sleep disorder; Axis III: Alleged disabilities of atrial fibrillation, asthma, hypertension, minimal spondylosis, mycoplasma in both lungs, irritable bowel syndrome, sleep apnea, hand, arm and back pain secondary to injuries, chronic exposure to paint fumes. Axis V: GAF=50. Prognosis is guarded. (Dept Ex. D, pp 3-9).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by 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 (DHS or department) 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 Bridges Reference 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.

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 lab results, 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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her

ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the Claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8.

In considering Claimant's residual functional capacity, it is noted that Claimant was receiving unemployment compensation benefits at the time of the hearing. In order to receive unemployment compensation benefits, a person must be ready, willing and able to return to their previous employment or accept comparable employment. This presumes Claimant is not disabled or unable to work.

In examining Claimant's medical evidence, according to his cardiologist, Claimant is doing well. Furthermore, his stress test was also normal after chest pains in January, 2013. Therefore, Claimant should retain the capability of performing work that is light in exertional level.

Next, the Administrative Law Judge must determine at Step four whether Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

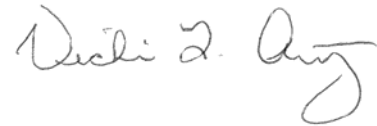
In this case, this ALJ finds that Claimant cannot return to past relevant work on the basis of the medical evidence as his past relevant work was medium in exertional level, according to the Dictionary of Occupational Titles. His employment over the last 9 years in factories would be medium in nature. Therefore, Claimant would not retain the capacity to perform that job and the analysis continues to Step 5.

As noted above, Claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is **UPHELD**.



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

Date Signed: July 10, 2013

Date Mailed: July 10, 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 mailing date of the rehearing decision.

The following claimants have 3 way hearings scheduled. Please call in at the correct time to let Administrative Hearings know you are ready to proceed.

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.

2013-19633/VLA

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:

