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

#### IN THE MATTER OF:



Reg. No.: 2013-30744 Issue No.: 2009; 4031

Case No.:

Hearing Date: May 28, 2013 County: Macomb-12

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 higovern the administrative hearing and appeal process. A fter due notice, a telephone hearing was commenced on May 28, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist

During the hearing, Claimant waived the time per iod for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On July 31, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

#### ISSUE

Did the Department of Human Services (DHS) properly deny Claimant 's Medic al Assistance (MA-P), Retro-MA and State Disability Assistance (SDA) application?

## FINDINGS OF FACT

The Administrative Law Judge, based upon t he competent, material and substantia levidence on the whole record, finds as material fact:

- (1) On November 2, 2012, Claimant f iled an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On January 3, 2013, t he Medical Review T eam (MRT) denied Claimant's application for MA-P/Retro-MA indicati ng Claimant was capable of other work. SDA was denied for lack of duration. (Depart Ex. A, pp 34-35).
- (3) On January 10, 2013, the department caseworker sent Claimant notice that his application was denied.

- (4) On February 13, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On April 26, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Depart Ex. B).
- (6) Claimant is a 52 year old man whose birthday is Claimant is 6'0" tall and weighs 185 lbs. Claimant completed the tenth grade.
- (7) Claimant had appealed the denial for Soc ial Security disability benefits at the time of the hearing.
- (8) Claimant does not have an alcohol or drug problem. Claimant smokes half a pack of cigarettes a day and has a nicotine addiction.
- (9) Claimant testified that he does not have a driver's license because he owes driver responsibility fees.
- (10) Claimant has not worked since 2006.
- (11) Claimant alleges disability on the basis of multip le impairments. Claimant has history of rectal bleeding, po lyps, anemia, healing Mallory-Weiss tear, gastritis, internal hemorrhoids, gastroesophageal reflux disease, hypertension and arthritis.

## **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is estab lished by Subchapter XIX of Chapter 7 of The Public Health & Welfar e Act, 42 USC 1397, and is adminis tered by the Department, (DHS or department), pur suant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Adminis trative Manual (BAM), the Brid ges Elig ibility Manual (BEM), and the Reference Tables Manual (RFT).

The State Disability Assistanc e (SDA) program which provides financial as sistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SD A program pursuant to MCL 400.10, et seq., and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manua I (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental

Security Income citizenship r equirement who are at least 18 years of age or emancipated mi nors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disab ility standards, exce pt that the minimum duration of the dis ability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act p rovides minimal cas h assistance to individuals with some type of severe, temporary disability which prevent s him or her from eng aging in substantial gainful work activity for at least ninety (90) days.

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 expect ed to last for a continuous period of not less 905(a). The person claimi than 12 months. 20 CFR 416. ng a physical or mental disability has the burden to establis h it through the use of competent medical evid ence from qualified medic al sources s uch as his or her m edical history, clinic al/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and ma ke appropriate mental adjustments, if a mental disability is alleged. 20 CRF 41 3.913. An not, in and of themselves, sufficient to individual's subjective pain complaints are establish disab ility. 20 CF R 416.908; 20 CFR 41 6.929(a). Similarly, conclusor y statements by a physician or m ental health professional that an individual is disabled or blind, absent supporting medical evidence, is in sufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require is everal 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 regulat ions require a five-step sequential evaluation process be utilized. 2 0 CFR 41 6.920(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 durat ion and whether it meet s 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 vocation al factors (e.g., age, education, and work exper ience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

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 wo rk you are doing is substantial gainful act ivity, we will find that you are not disabled regardless of your medical cond ition 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 clie nt's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings s pecified for the listed impairment that meets the duration require ment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
- 4. Can the client do the forme r work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analys is 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 t o 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).

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subse quent steps. 20 CF R 41 6.920(a)(4). If a determination cannot be made t hat an individual is disabled. or not disabled, at 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 indi vidual'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 c apacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An indivi dual's residual function al capacity assessment is evaluat ed at both St eps 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 n ot 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).

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 Claim ant's claims or Claimant's physicians' statements regarding disability. These regulations state in part:

Medical reports should include:

- (1) Medical history.
- (2) Clinical findings (suc h as the results of physical or mental status examinations);
- (3) Laboratory findings (such as ultrasounds, X-rays);
- (4) Diagnosis (statement of di sease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish t hat you are disabled; there must be medical signs and labor atory 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 c onsist of symptoms, signs, and laboratory findings:

- (a) **Sy mptoms** are your own des cription of your phy sical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) Signs are anatomical, phys iological, or psychologic al 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 in dicate 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, physiologic al, 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.

The medical findings 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 41 6.913(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 im pairment which can be expected to result in death, or which has lasted or can be expected to last for a cont inuous period of not less than 12 months. See 20 CF R 416.905. Your impairment must result from anatomical, phy siological, 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 inelig ible 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 analys is looks at whet her an individual meets or equals one of the Listings of Impairments. 20 CFR 416. 920(d). C laimant does not. The analy sis continues.

In the fourth step of the sequent ial consideration of a disability claim, the trier of fact must determine if the claimant's impairm ent(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 Claim ant cannot return to his past relevant work because the rigors of working as a characteristic are completely outside the scope of his physical labilities given the medical levidence presented.

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). After a careful review of the credible and substantial evidence on the whole record, this Administ rative Law Judge finds that Claimant meets statutory disability on the basis of Medical/Vocation Grid Rule footnote 201.09 as a guide.

## **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

- 1. The department sha II process Claim ant's Nov ember 2, 2012, MA/Retro-MA and SDA 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 rev iew Claimant's medica I cond ition for improvement in August, 2014, unless hi s Socia I Sec urity 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.

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

Date Signed: August 21, 2013

Date Mailed: August 22, 2013

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> 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 erro r, 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

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