

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-34525
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: August 6, 2013
County: Wayne-18

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a tele phone hearing was commenced on August 6, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

During the hearing, Claimant waived the time period 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 December 6, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA) 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 December 10, 2012, Claimant applied for MA, Retro-MA and SDA alleging disability.
- (2) On February 21, 2013, the Medical Review Team denied Claimant's application indicating Claimant was capable of performing other work. (Depart Ex. A, pp 2-3).

- (3) On February 25, 2013, the department caseworker sent Claimant notice that MA/Retro-MA and SDA had been denied.
- (4) On March 7, 2013, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA and SDA actions.
- (5) On May 29, 2013, the State Hearing Review Team again denied Claimant's application indicating that Claimant was capable of performing a wide range of unskilled work. (Depart Ex. B).
- (6) Claimant has a history of Crohn's disease status post bowel surgery 3 times, anemia, severe depression, degenerative disc disease, neuropathy, anxiety, panic attacks, bilateral carpal tunnel syndrome, osteoarthritis, hyperlipidemia, uncontrolled hypertension and osteomyelitis.
- (7) On January 2, 2013, Claimant underwent a psychiatric evaluation on behalf of his parole officer. Diagnosis : Axis I: Major Depressive Disorder, recurrent; Axis III: Crohn's disease, GERD, anemia; Axis IV: Moderate; Axis V: GAF=52. According to his Mental Residual Functional Capacity Assessment, Claimant was markedly limited in his ability to remember locations and work-like procedures; understand and remember one or two-step instructions; understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; sustain an ordinary routine without supervision; work in coordination with or proximity to others without being distracted by them; make simple work-related decisions, complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public, ask simple questions or request assistance, accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; respond appropriately to change in the work setting; travel in unfamiliar places or use public transportation and to set realistic goals or make plans independently of others. (Depart Ex. A, pp 11-17).
- (8) On February 12, 2013, Claimant was admitted to the hospital with severe low back pain, diarrhea and left hand forearm pain. He was found to have a closed fracture of the left radial head and was placed in a cast. He had severe lower back pain and was evaluated by orthopedic surgery. He complains of lower back pain. He had decreased range of motion and tenderness and a positive straight leg raise. An MRI showed focal right paracentral to right lateral disc protrusion at L3-L4 and focal right paracentral disc protrusion at L5-S1. He was having severe abdominal pain and diarrhea and was seen by the gastroenterologist. He underwent

an EGD and colonoscopy. The CT revealed a structure adjacent to the stomach which may reflect a cystic exophytic gastrointestinal stromal tumor. X-rays showed low lung volumes with bibasilar atelectasis and prominent loops of small bowel in the midabdomen suggesting ileus. Early obstruction could not be excluded. He was released in stable condition although still complaining of lower back pain. (Depart Ex. D, pp 1-56).

- (9) On March 28, 2013, Claimant underwent a psychological evaluation by the [REDACTED]. Over all, Claimant is verbal, sullen, sad and occasionally pleasant. His problems are primarily physical. There is no difficulty in his ability to comprehend and carry out simple directions and perform repetitive, routine simple tasks. There is mild difficulty in his ability to comprehend complex tasks. Diagnosis: Axis I: Depression; Polysubstance abuse in remission; Panic disorder with Agoraphobia; Axis II: Dependent Personality Traits; Axis IV: Economic and housing problems; Very limited social support and relationships; Fair judgment and insight; Low motivation and social skills; Completed tenth grade; regular education; GED achieved; Poor activities of daily living; requires extra time and rest periods to complete activities of daily living due to pain, movement, fatigue, motivation and depression; Axis V: GAF=62. (Depart Ex. B, pp 4-9).
- (10) On July 3, 2013, Claimant saw his primary care physician for chronic lower back pain. The lumbosacral spine MRI revealed a fusion of the L1 and L2 vertebral bodies and significant degenerative changes at T12-L1, L2-L3 and L5-S1. (Depart Ex. C, pp 7-11).
- (11) Claimant is a 51 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 240 lbs. Claimant has a high school equivalent education. Claimant last worked in October, 2003.
- (12) 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 depression, abdominal pain, shortness of breath and other non-exertional symptoms he describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his 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 October, 2003; 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 impairments upon his 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 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 his past relevant work because the rigors of working as a carpenter are completely outside the scope of his physical 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 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 records 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 CFR 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 51, has a high school equivalent education and an unskilled work history), this Administrative Law Judge finds Claimant’s MA/Retro-MA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department’s denial of his December 10, 2012, MA/Retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

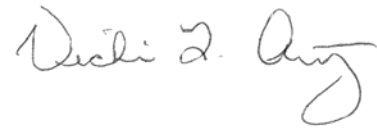
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

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

1. The department shall process Claimant’s December 10, 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 review Claimant’s medical condition for improvement in December, 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: December 27, 2013

Date Mailed: December 30, 2013

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

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The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

