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

IN THE MATTER OF:



Reg. No.: 2013-61349 Issue No.: 2009; 4009

Case No.: Hearing Date:

December 18, 2013

County: St. Clair

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's r equest for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 t o 431.250; and 45 CF R 205.10. After due notice, a telephon e hearing was held on December 18, 2013, from Lansing, Mich igan. Claimant per sonally appeared and testified. Participant s on behalf of the Department of Human Services (Department) included Family Independence Manager

<u>ISSUE</u>

Whether the Department proper Iy denied Claimant's application for the Medical Assistance (MA), Retroactive Medical Assistance (Retro-MA) and the State Disab ility Assistance (SDA) programs?

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 April 22, 2013, Claimant applie d for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On July 19, 2013, t he Medic al Re view T eam (MRT) denied Claimant's MA/Retro-MA and SDA application for lack of duration. (Depart Ex. A, pp 8-9).
- (3) On July 24, 2013, the department case worker sent Claimant notice that his application was denied.
- (4) On July 30, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 17, 2013, the Stat e Hearing Review Team (SHRT) upheld the denial indicating Claimant ret ained the capacity to perform basic work activities. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of arthritis, hypertension, shoulder/neck/back and ankle pain.
- (7) Claimant has a driver's license and is able to drive.
- (8) Claimant is a 44 y ear old man w hose birthday is Claimant is 5'6" tall and weighs 214 lbs. Claimant completed a h igh school education and last worked in March, 2013.
- (9) Claimant had applied for Social Securi ty disab ility a t 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 Adminis trative Manual (BAM), the Bridges Elig ibility Manual (BEM), and the Reference Tables Manual (RFT).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA 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 Manual (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 manual s. 2004 PA 344, Se c. 604, es tablishes 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 requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a phy sical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging 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 im pairment 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 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/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experienc e) 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 disable ed, 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 indi vidual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CF R 416.920(a)(4); 20 CFR 416.945. Residual f unctional capacity is the most an indiv idual can do d espite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residua I functional capacity assessment is eval uated 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 individ ual h as 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 i ndividual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impairment or combination of impairments is not severe if it does not signific antly 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 i ndividual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he has not worked since March, 2013. Therefor e, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individ ual'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 seve re. 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:

- 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 admin istrative 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 di sability due to arthritis, hypertension, shoulder/neck/back and ankle pain.

On March 4, 2013, Claimant arrived at the emergency department by whee Ichair. Claimant complained of back pain with movement and dizziness when standing up after bending over. Claimant stated he had just started a new job that day and was lifting heavy mac hinery which increas ed his bac k pain. He reported that he was recently started on Amlodipine and Benzapril/HCTZ for his recent diagnosis of hypertension. He was diagnosed with acute hypokalemia and acute r enal injury and admitted to the hospital. On March 5, 2013, Claimant was discharged in s table condition with a diagnosis of acute renal fa ilure from being on diur etics and ACE inhibitor, severe hypokalemia symptomatic, ess ential hypertension and a po sterior chest wall wou nd status post incision and drainage.

On May 7, 2013, Claimant's treating phy sician c ompleted a Medical Examination Report. Claimant is diagnos ed with allergie s, bilateral foot pain, hy pertension, neck/shoulder/upper back pa in and an abscess on his right upper back. The musculoskeletal exam reveal ed pain and muscle spasm in the right upper back. The physician indicated Claimant's condition was stable with physical limitations. Claimant is unable to use his hands or arms for simple grasping, reaching, pushing/pulling or fine manipulation. Claimant cannot use either his feet or I egs to operate foot and leg controls. Claimant is able to stand or walk less than 2 hour s in an 8-hour workday and sit about 6 hours in an 8-hour workday. Claimant can occasionally lift 20 pounds.

As previously noted, Claimant bears the burden to pr esent sufficient objective medical evidence to substantiate the alleged disab ling impair ment(s). As summarized abov e, the Claimant has presented so me 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 impair ment, 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 disgualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the indiv idual's impairment, or combination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical disabling impairments due to arthritis, hypertension, shoulder/neck/back and ankle pain.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), Listing 6.00 (genitourinary impairments), and Listing 11.00 (neurological) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirem ent of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at St ep 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 f unctional capacity ("RFC") and pas t relevant em ployment. 20 CF R 416.920(a)(iv). An individual is not disabled if he/she can perform past relevant work.

Id.; 20 CFR 416.960(b)(3). Past relevant wo rk 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 lear n the position. 20 CF R 416.960(b)(1). Vocational fact ors of age, education, and work experience, and whet her the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is as sessed based on impairment(s) and any r elated symptoms, such as p ain, 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 c lassified as sedentary, light, medium, heavy, and very heavy. 2 0 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 r equired 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 invo Ives sit ting 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 capab le 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 equirements, e.g., si tting, standing, walking, lifting, strength demands (exertional r carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparis on 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 residua I functional capacity assessment along wit h an individual's age, education, and work experience is considered to determine whethher an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exer tional limitations or restrictions include difficulty functioni ng due to nervousness. anxiousness. or depression; difficulty maintaining attention or concent ration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certa in 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, climbin g, crawlin g, or crouchin g. 20 CF R 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 work history consists of work as a job setter. In light of Claimant's testimony, and in considerati on of the Occupationa I Code, Claimant's prior work is classified as unskilled, medium work.

Claimant testified that he is able to walk short distances and can lift/carry approximately 8 pounds. The objective medical evidence notes Claimant is unable to use his hands or arms for simple grasping, reaching, pushi ng/pulling or fine manipulation. Claiman t cannot use either his feet or legs to operate foot and leg controls. Claimant is able to stand or walk less than 2 hours in an 8-hour workday and sit about 6 hours in an 8-hour workday. Claimant can occasionally lift 20 pounds. If the impairment or combination of impairments does not limit an indi vidual's physical or mental ability to do basic wor k activities, it is not a severe impairment (s) and dis ability does not exist. 20 CFR 416.920. In consider ation of the Claimant 's testimony, medical records, and current limitations, Claimant cannot be found able to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individua I's residual functional capace itv and age. education, and work experience is consider ed to determine whether an adjustment to other work can be m ade. 20 CFR 416.920(4)(v) At the time of hear ing, the Claimant was 44 years old and was, thus, consider ed to be a younger individual for MApurposes. Claimant has a high sc hool education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residu al capacity to substantial gainfu I 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 subs tantial evidence that the individual has the vocational qualifications to perform specif ic jobs is needed to meet the burde , 587 F2d 321, 323 (CA 6, 1978). O'Banner v Sec of Health and Human Services 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 adjust to other work. 20 CF 50) generally will not serious ly affect the ability to 416.963(c). Where an individual has an impairment or combination of impairments that results in both strength limit ations 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) re flecting the individual's maximum residual st rength capabilities, age, educ ation, and work experience, provide the framework for consideration of how much an individual's wor k capabilit v is further

diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all releva nt 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 Claim ant suffers from arth ritis, hypertension, shoulder/neck/back and ankle pain. The objective medical evidence Claimant is unable to use his hands or arms for simple gr asping, reaching, pushin g/pulling or fine manipulation. Claimant cannot use either his feet or I egs to operate foot and leg controls. Claimant is able to stand or walk less than 2 hour s in an 8-hour workday and sit about 6 hours in an 8-hour workday. Claimant can occasionally lift 20 pounds.

In light of the foregoing, it is found that Claimant main tains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physic al and ment al demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpar t P, Appendix II] as a gu ide, specifically Rule 201.23, it is found that Claimant is not dis abled for purposes of the MA-P program at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant not disabled for purpos es of the MA -P/Retro-MA and SDA benef it 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: January 3, 2014

Date Mailed: January 6, 2014

NOTICE OF APPE AL: The Claimant may appeal the De cision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, i f a timely Request for Rehearing or Reconsiderati on was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 disc overed evidence that existed at the time of the or iginal 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 clai mant must specify all reas ons 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.

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:

