

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-10186
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 19, 2013
County: Calhoun

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 February 19, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [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 April 20, 2012, 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) and Retro-MA?

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 August 3, 2012, Claimant filed an application for MA-P and Retro-MA benefits alleging disability.
- (2) On October 22, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that he was capable of performing other work, pursuant to 20 CFR 416.920(f). (Dept Ex. A, pp 58-59).

- (3) On October 25, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On November 5, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On January 7, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the ability to perform medium unskilled work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of seizures, post-traumatic stress syndrome, depression and chronic pain.
- (7) On January 9, 2012, Claimant was transported by ambulance to the emergency department after witnessed seizure activity and a prolonged postictal state. Claimant was postictal when the EMT arrived on scene. When Claimant became more awake and alert, he refused to come to the emergency department. However, his family convinced him to go to the ED for further evaluation. Claimant stated he takes Keppra twice a day for his seizure activity. He stated he had not taken that morning's dose. He had a tongue laceration from biting his tongue that morning. He denied any symptoms and basically wanted to be discharged without any further testing. Claimant had a right-sided mid lateral tongue laceration which was controlled with bleeding. No evidence of scalp trauma or facial injuries. (Claimant Exhibit A, pp 20-29).
- (8) On July 16, 2012, Claimant was seen at the emergency department for a seizure he had in the bathroom. He was curled up between the toilet and bathtub. His girlfriend and father indicated Claimant had been having seizures in his sleep. Claimant stated that the seizures were disturbing his sleep. He is unable to work as a roofer and his was having problems getting a ride. Dilantin was prescribed. A CTA revealed spondylosis at C6 and C7. (Claimant Ex. A, pp 47-48).
- (9) On July 27, 2012, Claimant called his treating physician. He had had a Grand Mal seizure and petite mal seizure. He was still working. Claimant was again instructed not to work. (Depart Ex. A, pp 40-41).
- (10) On August 6, 2012, Claimant underwent a mental status examination on behalf of the Disability Determination Service. The examining psychologist opined that Claimant has chronic pain and epileptic issues. He stated he has a grand mal seizure about once

every three months. He evidenced deficits in attention span and concentration. Diagnosis: Axis I: Dysthymic Disorder; Anxiety Disorder; Axis III: Seizure disorder; Chronic pain issues; Axis IV: Stressors: Unemployed, medical, financial; Axis V: GAF=54. (Department Exhibit B, pp 3-6).

- (11) On November 13, 2012, Claimant's treating physician completed a Medical Assessment of Ability to do Work-Related Activities. The physician indicated Claimant could sit for half an hour, and stand/walk for one hour without interruption. This was based on weakness and muscle wasting in extremities and pain in lower back, related to Grand Mal seizures. The physician indicated that during an 8 hour workday, Claimant could sit for half an hour and stand/walk for 6 hours; frequently lift/carry 5-10 pounds and occasionally lift/carry 20-25 pounds; and occasionally bend, twist, squat and kneel. The physician indicated Claimant's balance was impaired due to his years of uncontrolled seizures. Claimant was to avoid unprotected heights, moving machinery, fumes, noise, and automobiles. He was restricted from swimming, and from operating any type of machinery. Also seizure precautions while at sleep, pillows and padded both sides of bed. The physician opined that Claimant's impairments were likely to produce good days and bad days and he would be absent more than 4 days a month. He would also need to lie down or elevate his feet and legs during the day to reduce the pressure on his lower back. The physician opined that Claimant would be unable to qualify for most types of work due to the uncontrolled nature of his seizures. He was also a high liability risk for just about any type of employer due to his uncontrolled seizures and back pain. (Claimant Ex. A, pp 43-46).
- (12) On January 27, 2013, Claimant was discharged from the emergency department after suffering a grand mal seizure. (Claimant Exhibit A, pp 17-19).
- (13) On February 18, 2013, Claimant's primary treating physician diagnosed Claimant with seizures, indicating Claimant is currently taking Keppra and Dilantin. He was referred to a neurologist and instructed not to work at heights, no swimming and not driving. (Claimant Exhibit A, p 37).
- (14) Claimant is a 35 year old man whose birthday is [REDACTED]. Claimant is 6'4" tall and weighs 173 lbs. Claimant graduated from high school.
- (15) 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 the 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

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 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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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 eligible 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).

Based on Finding of Fact #6-#14 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his mental impairments meet or equal Listing 11.3:

11.03 Epilepsy - nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his August 3, 2012, MA/Retro-MA application cannot be upheld. At review, his neurologist's findings will be controlling.

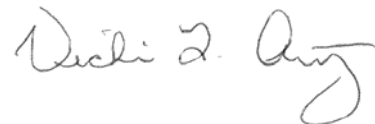
DECISION AND ORDER

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 eligibility purposes.

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

1. The department shall process Claimant's August 3, 2012, MA/Retro-MA 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 June, 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: June 7, 2013

Date Mailed: June 7, 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

VLA/las

cc:

