

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201312349
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: February 27, 2013
County: Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne Morris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on February 27, 2013. Claimant personally appeared and testified, along with his sister, [REDACTED]. The department witnesses were [REDACTED] and [REDACTED].

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)?

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 20, 2012, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
2. On November 2, 2012, the Medical Review Team (MRT) denied Claimant's application.
3. On November 8, 2012, the department sent out notice to Claimant that his application had been denied.
4. On November 14, 2012, Claimant filed a request for a hearing to contest the department's negative action.

5. On January 18, 2013, the State Hearing Review Team (SHRT) upheld the denial of claimant's application.
6. Claimant smokes about ½ pack of cigarettes per day; has not drunk alcohol since June 13, 2005 and does not use illegal drugs.
7. Claimant is a 43 year old man whose birthday is September 4, 1969. Claimant is 5'10" tall and weighs 185 lbs. Claimant completed high school and went through a trade school to be a welder/pipefitter.
8. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
9. Claimant is not currently working. He last worked in August, 2012 managing a carwash and mini-storage unit, which he did for two years, but he had to stop doing that job because of his health situation. Prior to that employment, the claimant had about a seven year job absence when he had numerous surgeries and was rehabbing from a work injury when a crane fell and injured him. Prior to that the claimant was employed as a carpenter building bridges from 1993 to 2003, when he suffered the work accident.
10. Claimant indicates he suffers from the following disabling impairments: neck/back injury; herniated discs; Post Traumatic Stress Disorder (PTSD).
11. Claimant suffered a work injury on December 8, 2003, when a crane fell on him. He suffered injury to his back/neck a fractured femur and injuries to his knee.
12. On December 15, 2003, the claimant underwent an open reduction and internal fixation of the left femur and arthrotomy of the left knee with removal of osteocartilaginous debris from the knee.
13. On January 21, 2004, the claimant underwent arthroscopy of the left knee with synovectomy and release of the patellofemoral adhesions.
14. An April 2, 2004 MRI of the cervical spine found a sizable herniated disk at the C5 – C6 level compromising the exiting left C6 nerve root. It also appeared to result in slight compression of the cord. There was also foraminal stenosis noted at C6 – C7 on the left side with potential compression of the exiting left C7 nerve root.
15. On April 4, 2004, the claimant underwent an anterior cervical discectomy and fusion of C5 – 6 and C6 –7.

16. A February 21, 2012 Medical Examination Report indicates the claimant has guarded walking due to his back pain. The physician also indicates the claimant has severe back pain requiring the use of narcotics. The clinical impression is deteriorating.
17. An August 27, 2012 MRI of the cervical spine found moderate to severe left neural foraminal stenosis at C7 – T1. There may also be C8 nerve root compression.
18. A September 13, 2012 EMG study found atrophy of the left hand intrinsic and forearm muscles, with moderate activation including triceps; mild acute changes in the left abductor pollicis brevis; and chronic neurogenic changes in hand intrinsic, forearm and paraspinal muscles. The study was remarkable for left C8 subacute and chronic C7 radiculopathy in the muscles tested and for mild demyelinating distal left median neuropathy at the wrist.
19. September 20, 2012 neurosurgery clinic notes state that the claimant had diffuse diminished sensation in bilateral hands and wrists. Negative Hoffmans' bilaterally. Right arm strength was intact. The left arm had triceps weakness of 3/5 with associated atrophy. The left grip and interossei demonstrate weakness of 3/5 and associated atrophy. Strength in both legs was normal. Deep tendon reflexes in the upper extremities were diminished on the right and absent on the left. DTR's in the lower extremities were normal and symmetrical. Range of motion of the cervical spine was restricted in both flexion and extension. Cervical compression was positive on the left. The claimant had difficulty with dorsiflexion of the hand. He is unable to dorsiflex or extend the fingers and is unable to spread the fingers out or abduct the fingers on the left hand.
20. On October 2, 2012, the claimant underwent a C7 – T1 cervical discectomy and fusion. The claimant continued to present with the triceps weakness and the contraction of his fingers in the left hand. He was discharged on October 3, 2012.
21. On October 5, 2012, the claimant's physician completed a Medical Examination Report. Claimant was being treated for arthritis, a hiatal hernia, PTSD, herniated discs, anxiety and chronic neck pain. Claimant was positive for neck pain and stiffness, back pain, and weakness, numbness and headaches. He suffered from neck pain that radiates to his left hand. He was also positive for sleep disturbances, agitation, nervousness and anxiousness.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (b) A person with a physical 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.

Under the Medicaid (MA) program:

"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.

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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a).

Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(a).

Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. 20 CFR 416.929(c)(3). Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account in reaching a conclusion as to whether you are disabled. 20 CFR 416.929(c)(3).

We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. 20 CFR 416.929(c)(3). Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In Claimant's case, the lack of strength on his left side, the pain in his neck and back, the numbness and tingling he experiences and the muscle spasms he reports 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 2012; 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 limitations 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 the 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 physical findings, that Claimant cannot return to his past relevant work because the rigors of working construction or even managing a car wash and mini-storage facility are completely outside the scope of his physical abilities given the medical evidence presented. Claimant has essentially no

use of his left arm/hand. This would not be consistent with the requirements of his previous employment.

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 the 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 the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive medical record 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). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are a significant numbers of jobs in the national economy which Claimant could perform despite his limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his September 20, 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 September 20, 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 non-medical eligibility factors.
2. The department shall review Claimant's medical condition for improvement in March, 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, diagnostic tests, etc. regarding his continued treatment, progress and prognosis at review.

/s/_____

Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 7, 2013

Date Mailed: March 8, 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

SLM/cr

cc:

