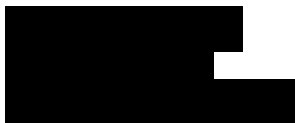


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2013-17084
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 25, 2013
County: Van Buren

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, an in-person hearing was commenced on April 25, 2013, at the DHS office in Ingham County. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistance Payment Supervisor [REDACTED] and Assistance Payment Specialist [REDACTED].

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA 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 November 9, 2012, Claimant applied for MA-P and Retro-MA.
- (2) On November 29, 2012, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA application indicating Claimant's impairment lacked duration. MRT did approve SDA. (Depart Ex. A, pp 9-10).
- (3) On December 4, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On December 12, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On January 29, 2013, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA indicating Claimant's condition is improving or expected to improve and not prevent all types of work for 12 months in a row. (Depart Ex. B, pp 1-2).
- (6) Claimant alleges disability based on a history of congestive heart failure, biventricular ICD (implantable cardiac defibrillator) in place 1/25/13, severe left ventricle dysfunction, ejection fraction 25%, rheumatoid arthritis and severe cardiomegalopathy.
- (7) On October 1, 2012, Claimant went to the emergency room in Oklahoma, complaining of shortness of breath for the past two weeks that had progressively gotten worse. A chest x-ray revealed cardiomegaly hilar thickening with no acute infiltrates or effusions. Claimant was diagnosed with dyspnea and congestive heart failure and admitted to the telemetry unit. On October 2, 2012, Claimant's 2-dimensional echocardiogram suggested an ejection fraction between 5% and 10% with fairly extensive regional disease. Claimant was discharged on 10/8/12. (Depart Ex. A, p 15, 41-103).
- (8) On October 16, 2012, Claimant's cardiologist in Oklahoma wrote that Claimant has congestive heart failure and a cardiomyopathy with an ejection fraction of less than 10% and has to wear a LifeVest because of lethal arrhythmias. He is not cleared currently nor will he be cleared in the next 6 months to return to work. (Depart Ex. A, p 40).
- (9) On November 7, 2012, Claimant saw a cardiologist in Michigan. Claimant has been wearing a LifeVest since being discharged in October. He still gets very tired with minimal exertion. Claimant has a left ventricle ejection fraction of 10% documented by an echocardiogram on 10/20/12. Claimant was diagnosed with severe cardiomyopathy. A two-dimensional echocardiogram performed on 10/2/12 was remarkable for an estimated ejection fraction of 5% to 10% with akinesis of the anterior septum, anterolateral wall, lateral wall and inferolateral wall. There was also moderate mitral regurgitation, mild-to moderate pulmonary hypertension. He also had a history of extensive alcohol and tobacco use and rheumatoid arthritis. The computed tomography scan was remarkable for fairly extensive mediastinal lymphadenopathy and ground-glass opacities of unclear origin. Claimant was instructed to continue wearing the LifeVest and was scheduled for cardiac catheterization, with a follow-up echocardiogram in 8 weeks. The cardiologist noted that if the echocardiogram showed ongoing left ventricle dysfunction, Claimant would require a defibrillator. (Depart Ex. A, pp 15-17).
- (10) On November 8, 2012, Claimant's cardiologist wrote a letter indicating Claimant has a known history of significant underlying structural heart disease. He was recently hospitalized due to severe congestive heart failure. The workup at that time included an echocardiogram which

showed severe left ventricle systolic dysfunction with an estimated ejection fraction of 10% and evidence of regional disease. Claimant's heart failure was treated and he was discharged. He presently is New York Heart Association functional class III at best and is unable to perform any type of meaningful employment. He is wearing a Life Vest to prevent arrhythmic sudden death. (Depart Ex. A, p 18).

- (11) On November 14, 2012, Claimant was admitted to the hospital and underwent a coronary angiography, left ventriculography, 12 lead EKG, and continuous telemetry monitoring. His lungs were clear to auscultation bilaterally and the LifeVest was in place. He had regular rate and rhythm. He was discharged on November 15, 2012 with a diagnosis of nonischemic cardiomyopathy, severe left ventricle dysfunction, ejection fraction per left ventriculography of 25%; normal coronary arteries per catheterization; moderate mitral regurgitation per echocardiogram on 10/2012; and a left bundle branch block. (Depart Ex. A, pp 20-25).
- (12) On November 29, 2012, Claimant's cardiologist completed a medical examination of Claimant. Claimant was diagnosed with severe cardiomyopathy and congestive heart failure. Claimant's cardiologist indicated Claimant's condition was deteriorating. (Depart Ex. A, pp 13-14).
- (13) On April 25, 2013, during the hearing, Claimant testified that on January 25, 2013, a defibrillator had been installed in his chest.
- (14) Claimant is a 46 year old man whose birthday is [REDACTED]. Claimant is 6'1" tall and weighs 240 lbs. Claimant completed high school.
- (15) Claimant was appealing the denial for Social Security disability 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).

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).

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 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).

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 cardiovascular impairments meet or equal Listing 4.02(A) and 4.02(B):

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance

of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

a. Dyspnea, fatigue, palpitations, or chest discomfort; or

b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

As indicated, Claimant's ejection fraction was 25% in November, 2012, after having been wearing a LifeVest since October, 2012. Claimant's condition continued to deteriorate resulting in a defibrillator being implanted on January 25, 2013. During the hearing, Claimant presented with dyspnea, fatigue and obvious chest discomfort. He also required the use of a cane, demonstrating an ataxic gait and mental confusion. Therefore, Claimant meets the requirements of Listing 4.02.

DECISION AND ORDER

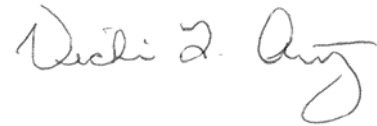
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA eligibility purposes.

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

1. The department shall process Claimant's November 9, 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 May, 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: May 17, 2013

Date Mailed: May 17, 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.

2013-17084/VLA

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative hearings
Recons ideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

