

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-30900
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 16, 2013
County: Oscoda

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 May 16, 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 July 10, 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), retroactive Medical Assistance (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 October 1, 2012, Claimant applied for MA, Retro-MA and SDA.
- (2) On December 27, 2012, the Medical Review Team denied Claimant's application for MA and Retro-MA indicating there was insufficient medical. SDA was denied due to lack of duration. (Depart Ex. A, pp 47-48).
- (3) On January 3, 2013, the department case worker sent Claimant notice that his MA/Retro-MA and SDA application had been denied.

- (4) On February 14, 2013, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA/SDA action.
- (5) On April 23, 2013, the State Hearing Review Team again denied Claimant's application indicating that the medical evidence was insufficient to evaluate Claimant's vision and functional ability. SDA was denied because the information in the file was inadequate to ascertain whether Claimant is or would be disabled for 90 days. (Depart Ex. B).
- (6) Claimant has a history of two strokes, two heart attacks, restricted vision, tunnel vision, ejection fraction estimated at 35%, congestive heart failure, pleural effusion with thoracentesis, right leg deep vein thrombosis (DVT), hepatitis B, degenerative arthritis, chronic emphysema and hypertension.
- (7) On February 28, 2012, Claimant was admitted to the hospital for an acute cerebral vascular accident (CVA). He was previously hospitalized in September, 2011 for hypertensive urgency, a stroke, and pleural effusion with subsequent thoracentesis. He was discharged home after that hospital stay on multiple antihypertensives. He stopped taking his medications yesterday because it was a hassle and he was feeling pretty good. He works at a sawmill and had a sudden loss of vision and lack of coordination and was brought to the emergency room. A CT of his head showed an acute right occipital lobe infarct and he was admitted. (Depart Ex. A, pp 23-28).
- (8) On March 22, 2012, Claimant was evaluated by his cardiologist. He had a recent hospitalization on February 28, 2012 for a CVA/TIA and hypertensive urgency. He has a known history of an acute cerebral vascular accident as he was hospitalized in September, 2011 for a 3-week period. Claimant had been noncompliant with his medications and his blood pressure on admission was greater than 200. A recent cardiac workup included a 2-D echocardiogram dated 2/28/12 which demonstrated an ejection fraction of the lower limits of normal, about 50% mild pulmonary hypertension. From a cardiac standpoint, Claimant was asymptomatic. There was no chest pain, no shortness of breath, no palpitations and no syncope. (Depart Ex. A, pp 40-41).
- (9) On April 30, 2013, Claimant was having a stress test and was transferred to the emergency department due to an elevated blood pressure, intermittent chest pain, and shortness of breath. He was admitted for an acute myocardial infarction and apical thrombus. He underwent a cardiac catheterization. No stents were placed. An ultrasound of the kidneys revealed a benign less than 1.0 cm size anechoic right renal cyst. Otherwise, a normal bilateral renal ultrasound is demonstrated. A chest x-ray showed cardiomegaly with effusion suggests possible underlying heart failure. Mild, chronic underlying emphysema is likely present. The

echocardiogram revealed mild to moderate left ventricular systolic dysfunction, ejection fraction at 35%, “pseudonormal” filling pattern of the left ventricle for age (stage 2 diastolic dysfunction), mild concentric LV hypertrophy, mildly dilated LV, biatrial dilatation, mild mitral regurgitation, moderate tricuspid regurgitation, sclerotic aortic valve, mild aortic regurgitation, and pulmonary artery systolic pressure is 70 mm Hg and diagnosed with severe pulmonary hypertension. He was discharged on May 6, 2013 in stable condition. (Depart Ex. A, pp 85-119, 226, 267-268).

- (10) On May 6, 2013, Claimant was admitted to the hospital with shortness of breath and a right leg DVT. He had cardiac catheterization and TEE and a left vein thrombus. On May 8, 2013, an ultrasound showed a probable deep vein thrombosis of the right lower extremity from the proximal to distal superficial femoral vein. He was discharged on May 11, 2013, with a final diagnosis of apical thrombus, non-ST segment elevation myocardial infarction, systolic cardiac heart failure, chronic obstructive pulmonary disease (COPD), hypertension, tobacco abuse, hyperlipidemia and right leg DVT. (Depart Ex. A, pp 120-225, 227-269).
- (11) Claimant is a 54 year old man whose birthday is [REDACTED]. Claimant is 5'5" tall and weighs 170 lbs. Claimant graduated from high school. Claimant last worked in October, 2012.
- (12) Claimant had applied for Social Security disability 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).

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 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 manuals. 2004 PA 344, Sec. 604, establishes 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 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.

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 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 shortness of breath, chest pain, uncontrolled high blood pressure 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, 2012; consequently, the analysis must move to Step 2.

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 in a sawmill are completely outside the scope of his physical and mental 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 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. Moreover, the medical evidence showed he was hospitalized a week for a myocardial infarction and was released in stable condition, only to return that evening for another 5 day hospitalization with a final diagnosis of apical thrombus, non-ST segment elevation myocardial infarction, systolic cardiac heart failure, chronic

obstructive pulmonary disease (COPD), hypertension, tobacco use, hyperlipidemia and right leg DVT. In addition, there has been no evidence presented that Claimant's condition has stabilized. He credibly testified that he is still suffering chest pain and shortness of breath. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F.2d 216 (1986). Based on Claimant's vocational profile (approaching advanced age, Claimant is 54, has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA and SDA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of his October 1, 2012, MA/Retro-MA and SDA application cannot be upheld.

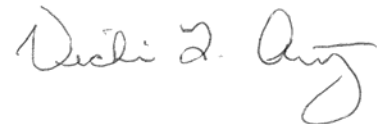
DECISION AND ORDER

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 October 1, 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 August, 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: July 29, 2013

Date Mailed: July 29, 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:

