

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-36298
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: July 25, 2013
County: Ottawa

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on July 25, 2013, from Lansing, Michigan. Participants on behalf of Claimant included Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] and Eligibility Specialist [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 October 24, 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) and Retroactive Medical Assistance (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 October 22, 2012, Claimant applied for MA, Retro-MA and SDA.
- (2) On December 18, 2012, the Medical Review Team (MRT) approved SDA and denied Claimant's application for MA and Retro-MA indicating there

was no evidence Claimant's impairment could be expected to last for at least 12 consecutive months. (Depart Ex. A, pp 1-2).

- (3) On December 21, 2012, the department caseworker sent Claimant notice that MA/Retro-MA had been denied.
- (4) On March 19, 2013, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA action.
- (5) On June 10, 2013, the State Hearing Review Team again denied Claimant's application indicating that Claimant retains the capacity to perform light exertional tasks. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of coronary artery disease, three heart attacks, a triple bypass, 5 stents, left rotator cuff tear, hyperlipidemia, type 2 diabetes insulin dependent, neuropathy and hypertension.
- (7) In October, 2012, Claimant had a Dobutamine echo stress test. The result was an abnormal study with findings most consistent with limited infarction of the base of the inferior wall. His last stress test was interpreted as borderline EKG changes with development of hypokinesis of the base of the inferior wall. On this study, the base of the inferior wall appears hypokinetic at rest and did not change with exercise. (Depart Ex. C, pp 73-74).
- (8) In October, 2012, Claimant was admitted to the hospital with complaints of chest pain. He had unstable angina and was seen by cardiothoracic surgery where he underwent urgent three-vessel coronary artery bypass graft surgery. He has a history of coronary artery disease and 5 stents. He was assessed with type 2 diabetes mellitus uncontrolled, complicated by coronary artery disease and stress hyperglycemia status post CABG. A transesophageal echo demonstrated the ejection fraction to be approximately 35%. (Depart Ex. A, pp 22-27).
- (9) In April, 2013, Claimant followed up with his primary care physician about his diabetes. Claimant had been managing his diabetes with oral medications until his last heart attack in October, 2012. Since October, 2012, Claimant has been experiencing numbness and tingling in his feet and he is unable to stand on his feet for a full day. Claimant is now on insulin in addition to his oral medications. (Depart Ex. C, pp 13-14).
- (10) In April, 2013, Claimant underwent a medical evaluation by the Disability Determination Service. Claimant's chief complaints were coronary artery disease, hypertension, diabetes, hypercholesterolemia, GERD and a left rotator cuff tear. During the exam, Claimant did have findings of peripheral neuropathy with some mild lower extremity edema. Continued

aggressive risk factor modification and follow up cardiac evaluation would be indicated. He also had tenderness over the anterior shoulder joint with diminished range of motion. His grip strength and dexterity are well preserved. He had some associated weakness in the left shoulder girdle and range of motion exercises would be indicated. (Depart Ex. B, pp 3-9).

- (11) In May, 2013, Claimant was evaluated by cardiology for coronary artery disease. Claimant is able to walk a couple of blocks but is slowed by dyspnea and leg weakness. He also has chronic chest wall pain and very mild persistent chronic throat discomfort. On 3/15/2010, Claimant underwent catheterization and stent placement with an ejection fraction of 55%. On [REDACTED], Claimant had percutaneous coronary intervention to the circumflex artery for in-stent restenosis. Then on 10/12/12, he underwent a coronary artery bypass graft. Claimant was diagnosed with coronary artery disease, native vessel, status post coronary artery bypass graft. A myocardial perfusion study was scheduled. (Depart Ex. C, pp 21-23).
- (12) In May, 2013, x-rays of Claimant's lumbar spine revealed Grade 1 pseudospondylolisthesis at L4. Vertebral height and alignment are otherwise satisfactory. There is generalized spondylosis between T10 and S1 with the exception of two spaces between L3 and L5. The changes range from mild to advanced and are most severe at the lumbosacral level. There is also multilevel mid and lower lumbar facet arthrosis. (Depart Ex. B, p 10).
- (13) In July, 2013, Claimant went to the emergency department complaining of neck and shoulder pain. Claimant stated that he feels numbness and tingling in all four extremities, not just in the shoulder where he was complaining of the pain. He states that this pain only hurts when he tries to move his shoulder and is not the type of pain he had when he had his heart attack. He has pain over the anterior surface of his left shoulder. He does have a positive empty can test on the left shoulder. He was given an injection of Toradol and prescriptions for Motrin and Flexeril and discharged. (Depart Ex. C, pp 30-31).
- (14) In August, 2013, Claimant's primary physician completed a Medical Examination Report diagnosing Claimant with diabetes, chronic pain in his neck and shoulders and neuropathy in his hands and feet. Claimant's physician opined that Claimant's ability to remember, engage in sustained concentration and follow simple directions was limited. The physician also indicated that Claimant was not able to meet his needs in the home and required assistance with housework, cooking and laundry. (Depart Ex. C, pp 1-2).

- (15) Claimant is a 52 year old man whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 220 lbs. Claimant completed the eighth grade. Claimant last worked in October, 2012.
- (16) Claimant was appealing the denial of 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).

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 chest pain, shoulder pain, neuropathy and shortness of breath 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 this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical and mental limitations upon

his ability to perform basic work activities. Claimant's treating physician opined that, Claimant is unable to meet his own needs in his home at this time, and has limitations in sustained concentration, memory and following directions. Because Claimant's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2). Therefore, 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 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 maintenance 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. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Based on Claimant's vocational profile (approaching advance age, Claimant is 52, has an eighth grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.09 as a guide. Consequently, the department's denial of his October 22, 2012, MA/Retro-MA application cannot be upheld.

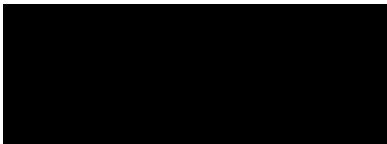
DECISION AND ORDER

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 eligibility purposes.

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

1. The department shall process Claimant's October 22, 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 November, 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: 11/01/2013

Date Mailed: 11/04/2013

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original 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 claimant must specify all reasons 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/sw

cc:

