

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-43657
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: October 22, 2013
County: Wayne-82

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 October 22, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) 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 January 2, 2013, Claimant filed an application for MA and Retro-MA benefits alleging disability.
- (2) On February 9, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant was capable of performing other work. (Depart Ex. A, pp 8-9).
- (3) On February 14, 2013, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On April 24, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 9, 2013, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating the medical evidence of record indicates Claimant retains the capacity to perform medium work. (Depart Ex. B).
- (6) Claimant has a history of knee, hip, back and foot problems.
- (7) Claimant is a 53 year old man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 187 lbs. Claimant has a ninth grade education. He last worked in 2005 as a maintenance man.
- (8) Claimant had applied for Social Security disability benefits 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he has not worked since 2005. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to knee, hip, back and foot problems.

In September, 2012, Claimant presented with suspected gastroenteritis. He stated he was having some chest pain. In the emergency department he had mild hypotension and tachycardia. A 12-lead EKG showed a sinus tachycardia rate of 129, axis was normal. PR interval was normal. No acute ST-segment elevation or depression present. Chest x-rays showed multiple dilated small bowel air-fluid levels in the descending colon suggestive of early small bowel obstruction. Electrolytes revealed anion gap metabolic acidosis, hyponatremia, hypokalemia, and acute renal failure. His creatinine was 6.8. His baseline creatinine in April, 2012, was 1.0. His troponin was negative. His CBC was within normal limits and his urinalysis suggested an infection. CT showed acute appendicitis with moderate to large amount of pelvic fluid and fluid in the perihepatic and perisplenic regions. There was also a small bowel ileus noted. Claimant was admitted to surgery with a diagnosis of a probable ruptured appendicitis, acute renal failure, dehydration, hypochloremia, hyponatremia, hypokalemia and metabolic acidosis.

In October, 2012, Claimant presented to the emergency department with abdominal pain. He was admitted to the hospital and managed conservatively with nasogastric decompression, nothing by mouth, IV rehydration and pain management. He responded and was discharged after adequate ambulation and eating without emesis. He was discharged two days later with a diagnosis of recurrent pancreatitis.

In November, 2012, Claimant presented to the emergency department with 3 days of progressive and constant wrist pain and swelling. He also reported pain in his right elbow and shoulder, causing limited mobility and range of motion. He was admitted with a primary diagnosis of gout, hypertension, coronary artery disease, diabetes, chronic muscle pain and alcohol abuse. He was administered Colchicine in the

emergency department with no response. Labs were drawn that showed decreased magnesium and potassium that was corrected. He was restarted on home medications of Norvasc and Metoprolol for blood pressure, Vicodin and Colchicine for pain, and Flexeril for chronic muscle pain. The wrist x-ray showed soft tissue swelling with no signs of fracture or dislocation. CXR showed no acute process and the EKG for tachycardia showed sinus tachycardia. The right forearm Doppler showed no acute deep venous thrombosis of the right upper extremity from the right internal jugular vein to the distal brachial vein. On day 2 he was given a steroid injection in his right wrist and right elbow. Pain improved by the fourth day and he was discharged. Diagnosis: right wrist pain likely acute gout as Claimant admitted to a history of gout and of running out of gout medications 4-5 years ago. Claimant's epigastric pain was diagnosed as likely secondary to chronic alcohol use. Hypokalemia and acute kidney injury was secondary to chronic alcohol use. For hypertension, Claimant was started on Carvedilol. Claimant reported poor compliance with home medications. For his diabetes, he was educated about his diet and the oral medications were put on hold.

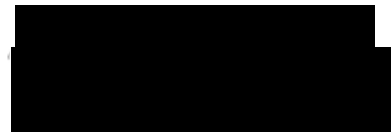
As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that he had knee, hip, back and foot problems. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at Step 2 for lack of a severe impairment and no further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant not disabled for purposes of the MA-P benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/28/2013

Date Mailed: 10/29/2013

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/sw

cc:

