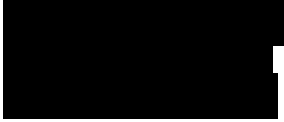


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2013-48031
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: October 3, 2013
County: Lenawee

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 October 3, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included 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 January 17, 2014, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly denied Claimant's Medical Assistance (MA), Retro-MA and State Disability Assistance (SDA) application?

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 July 23, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On May 1, 2013, the Medical Review Team (MRT) denied Claimant's application finding Claimant capable of doing other work. SDA was denied for lack of duration. (Depart Ex. A, pp 3-4).
3. On May 9, 2013, the department caseworker sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.

4. On May 20, 2013, Claimant filed a request for a hearing to contest the department's negative action.
5. On July 29, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light work. (Depart Ex. B, pp 1-2).
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 35 year old man whose birthday is [REDACTED] Claimant is 5'8" tall and weighs 209 lbs.
8. Claimant does not have an alcohol, drug or nicotine history.
9. Claimant has a driver's license and is able to drive.
10. Claimant has a high school education.
11. Claimant is not currently working. Claimant last worked in April, 2012.
12. Claimant alleges disability on the basis of a heart valve replacement, congestive heart failure, cerebrovascular accident, hypertension, gallstones, right lower extremity neuropathy, endocarditis, chronic anticoagulation, anemia, chronic kidney disease and elevated liver enzymes.
13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
14. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by 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 (DHS or department) 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 Bridges Reference 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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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.

The federal regulations require that several considerations be analyzed in sequential order:

. . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education,

and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.

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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

... You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

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 ultrasounds, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not eligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). In this case, Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). 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.

The medical information indicates that Claimant suffered heart valve replacement, congestive heart failure, cerebrovascular accident, hypertension, gallstones, right lower extremity neuropathy, endocarditis and elevated liver enzymes.

Claimant was evaluated by a podiatrist in February, 2013, for ingrown nails to bilateral hallux. He presented with acute onset of paronychia to the medial aspect of his hallux nails stemming from the hospitalization for a mitral and aortic mechanical valve replacement approximately six months ago. Claimant attributes his ingrown nails to the perioperative medications he has been on as he has not had any in the past. He did have a perioperative event of a stroke affecting his right side. He has a past medical history of acute renal failure perioperatively, anemia, stroke, difficulty walking and mechanical and mitral valve replacement. On exam he is status post CVA with right fixed equinus deformity.

Claimant underwent an independent medical evaluation on behalf of the Department in February, 2013. Claimant has a history of endocarditis and needed aortic valve replacement and mitral valve replacement. He complains of being tired, having insomnia, anxiety, not much shortness of breath and occasional chest pain. He states he has numb legs, his right leg after surgery and he was told he had a stroke after surgery. He also complained of leg weakness. The cardiovascular exam revealed S1 and S2 were abnormal with the click sound of the prosthetic valve noted. Claimant's gait and station are abnormal with a limp on walking and heel, toes and tandem walking is difficult with loss of balance.

In May, 2013, Claimant was seen by a vascular surgeon for evaluation and treatment of valvular heart disease and perioperative management of anticoagulation. Claimant had mitral valve replacement and aortic valve replacement with mechanical valves in 5/2012 and 5/2012, respectively for endocarditis, complicated by renal failure and heart failure. He reports taking Cytoxan for renal dysfunction. He also reports a stroke complicating the second operation. He states he has rare episodes of chest pain, described as right-sided, every few months, not associated with activity and lasting only a few minutes.

In August, 2013, Claimant followed up with the cardiovascular clinic. An echocardiogram from 8/21/12 showed an ejection fraction of 45%, mild left ventricle hypertrophy, mild diastolic dysfunction, mild prosthetic mitral regurgitation, trace aortic regurgitation, mild prosthetic AV obstruction. Claimant reported another echocardiogram done recently in 2013, showing left atrium and right atrium mildly dilated, trace mitral regurgitation, prosthetic valves open along with trace tricuspid regurgitation, trace aortic regurgitation, with gradients normal across both valves. He is reporting intermittent chest discomfort 2 to 3 times per month for the last several months. He reports having chest discomfort that starts on the left side and radiates to his back and lasts 5 to 15 minutes and resolves on its own. The discomfort does not occur with activity, only with rest and while eating. He states that it is a sharp, tight pain that makes it difficult to breathe during those 5 to 10 minutes.

In September, 2013, Claimant saw his primary care physician for chest pain, muscle aches and arthralgias. On exam, he had generalized body aches and chest pain that is intermittent and diffuse. His mood was euthymic. He was diagnosed with mitral valve

endocarditis, essential hypertension, abnormal hepatic enzymes, dyslipidemia, polyneuropathy, chronic pain syndrome and coagulation defects due to heart valve replacement. He was instructed to continue his current medications and was referred to Rheumatology and encouraged to follow-up with his cardiologist.

In October, 2013, Claimant was referred to the [REDACTED] for elevated liver enzymes. On exam, what is not able for him is he had an aortic valve replacement and mitral valve replacement in April/May of 2012, and since that time he has had a 60-pound weight gain. Claimant was diagnosed with abnormal LFTs and abdominal imaging with ultrasound and serologic work was scheduled.

Claimant also followed up with his cardiologist in October, 2013. He was last seen in August, 2013, at which time he complained of atypical chest pain and was referred for a stress study. He underwent pharmacologic perfusion study that revealed an ejection fraction of 65% with no wall motion abnormalities or no inducible ischemia. His prior echocardiogram from July, 2013, demonstrated an ejection fraction of 45% with normally functioning mechanical aortic and mitral valves and mildly dilated LV cavity. He also underwent a liver ultrasound that demonstrated no steatohepatitis, gallstones, or surrounding fluid. He reports that he is following with a gastroenterologist for a possible diagnosis of non-alcoholic fatty liver disease. He also stated he has occasional recurrence of his chest discomfort which can start in either armpit, is sharp in nature and moves to his back. The symptoms last approximately 5 minutes and resolve spontaneously without intervention. Claimant was instructed to purchase an arm blood pressure cuff and begin taking his blood pressure on a daily basis and keep a log to bring into his next appointment. He was also to start aspirin 81 mg daily and continue warfarin with the goal of an INR of 2.5 – 3.5, and he was referred to the Anticoagulation Clinic.

In November, 2013, Claimant followed up with his primary care physician for continued right and left sided chest pains that are intermittent and occur at rest. He is also experiencing generalized body aches and pain. He has been referred to the Hepatology Clinic by his cardiologist.

Claimant testified credibly that he has limited tolerance for physical activities and is unable to walk or stand for lengthy periods of time. He stated he has permanent neuropathy in his right leg. He has problems walking and putting any pressure on his right foot. He also has chest pains and will be on Coumadin the rest of his life. He is required to get his INR levels checked monthly. He also has trouble doing any activities due to his shortness of breath on exertion and fatigue.

Claimant is 35 years old, with a high school education. Claimant's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work 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 significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

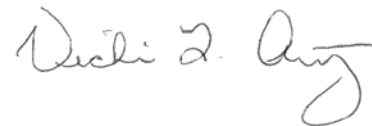
DECISION AND ORDER

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 July 23, 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 February, 2015, 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: February 7, 2014

Date Mailed: February 7, 2014

NOTICE OF AP PEAL: 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/las

cc:

