

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-49990
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: November 19, 2013
County: Wayne-41

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 November 19, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department included Eligibility Specialist [REDACTED]

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA)?

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 December 20, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On May 17, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P, indicating that Claimant is physically capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied due to lack of duration. (Depart Ex. A, pp 5-6).
- (3) On May 23, 2013, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On May 29, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On August 1, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform light work. SDA was denied due to lack of duration. (Depart Ex. B).
- (6) Claimant alleges disability due to arthritis and back, hip and leg pain.
- (7) Claimant is a 52 year old man whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 178 lbs. Claimant completed a high school equivalent education. He last worked in 2009 as a caregiver.
- (8) Claimant was appealing the denial of 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).

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). 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 2009. 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 arthritis and back, hip and leg pain.

In June, 2012, Claimant was admitted to the hospital. He had noticed swelling on the left side of his neck which increased in size causing pain. At admission his blood

pressure was 130/82, white cell count was 26,000 and his T-max was 99.8 degrees. He was started on IV fluids and IV hydration. He has been drinking alcohol and then he started having alcohol withdrawal and he was requiring the restraints. His vitals were unstable and he became very agitated. He was transferred to a step-down. His blood pressure was very elevated in the step-down and he was on the IV medication to control his blood pressure. When his blood pressure was settled down and he was hemodynamically stable, he was transferred back to the tenth floor and he had a workup done. He had the biopsies done and his pathology report was negative for any malignancy. He was discharged home in stable condition with antibiotics.

In September, 2012, Claimant followed up with a physician after being hospitalized for a neck abscess. The biopsy of the abscess was negative for any malignancy. He also had alcohol withdrawal. He is still smoking and drinking and he was advised to stop smoking and drinking.

In January, 2013, Claimant saw a physician for a checkup and had some forms that needed to be filled out. He was complaining of a lot of pain all over his body, especially his hips. He mentioned that when he was in his teens he fell out of a second story window and now the pain is aggravating. He is complaining of back pain. He has been using a walker because of the hip pain. He is also complaining of weakness in his legs especially when he is standing for a long period of time, his legs give out on him. He has a known history of hypertension and has been taking his medication. His blood pressure has been stable. He also has a known history of chronic pain for which he takes Vicodin. He does smoke cigarettes and was complaining of a chronic cough, but denied any excessive shortness of breath. Claimant's physician also completed a medical examination report diagnosing Claimant with hypertension, degenerative joint disease, history of neck abscess and a fall and hip pain. The physician indicated Claimant used a walker because of hip pain and degenerative joint disease. The physician opined that Claimant's condition was stable and he was limited to lifting less than 10 pounds a day and standing/walking less than 2 hours of an 8-hour day. The physician found Claimant could meet his own needs in his home.

In March, 2013, Claimant underwent an independent medical evaluation by the [REDACTED] [REDACTED] [REDACTED]. Claimant's chief complaint was lower extremity problems. He reported that as a child he fell out of a 3-story window and landed on his hip and since that time his hips have become increasingly more and more sore, making it difficult for him to walk. He now prefers to walk with a walker. He stated he drinks a six pack a day. He reported that he has been in relatively decent health recently. He stated he smokes about 1/2 pack a day. He does complain of pain in his hips and back, and difficulty walking. He said he gets lightheaded and dizzy at times, and he complains of numbness and tingling sensations, especially in his left baby finger and half of the left ring finger. The examining physician found Claimant to be in no acute distress. He came in using a walker. His blood pressure was taken three times, 170/90, 166/90 and 160/90. He had full range of motion of all extremities. He was able to get on and off the table. He could not walk heel to toe, on his heels or on his toes due to pain in the hip. He may have had some atrophy in his lower extremities. He was able to squat most of the way down and get back up. He had very little movement in his hips. The physician opined that Claimant probably has some pathology in both hips. He believed Claimant was an alcoholic and may have COPD. His blood pressure was

poorly controlled. X-rays of the right and left hip were normal. There were no acute traumatic or intrinsic osseous abnormalities. The joint spaces are well maintained without discernible spurring, eburnation, or erosive change along the opposing surfaces. The surrounding soft tissues were intact. The physician opined Claimant needed a walker for pain reduction.

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 arthritis and back, hip and leg pain. 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.

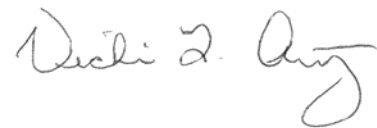
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA/Ret-ro-MA and SDA 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: December 6, 2013

Date Mailed: December 6, 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/las

cc:

