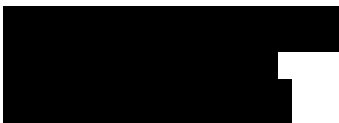


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

**IN THE MATTER OF:**



Reg. No.: 2013-8356  
Issue No.: 2009; 4031  
Case No.: [REDACTED]  
Hearing Date: January 22, 2013  
County: Lake

**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 January 22, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [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 April 19, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

**ISSUE**

Did the Department of Human Services (DHS) properly deny 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 September 6, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On October 8, 2012, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA and SDA. (Depart Ex. A, p 9).
3. On October 15, 2012, the department caseworker sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.

4. On October 23, 2012, Claimant filed a request for a hearing to contest the department's negative action.
5. On December 27, 2012, the State Hearing Review Team (SHRT) found the medical evidence of record indicates that Claimant's condition is improving or is expected to improve within 12 months from the date of onset.. (Depart Ex. B, pp 1-2).
6. Claimant had applied for Social Security disability benefits at the time of the hearing.
7. Claimant is a 44 year old man whose birthday is [REDACTED] Claimant is 6'0" tall and weighs 175 lbs.
8. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes 4 to 5 cigarettes a day. Claimant has a nicotine addiction.
9. Claimant has a driver's license and no longer drives due to losing the vision in his left eye.
10. Claimant has a high school education.
11. Claimant is not currently working. Claimant last worked in June, 2011.
12. Claimant alleges disability on the basis of uncontrolled diabetes, neuropathy, hepatitis C, gastroesophageal reflux disease (GERD), partial blindness, and helicobacter pylori.
13. On March 19, 2012, Claimant was evaluated at the [REDACTED] program. Claimant is insulin dependent twice a day. He intentionally lost 100 pounds in the last year and a half by decreasing his food and increasing his activity. He complained of severe nausea, vomiting and diarrhea with the increase in Metformin to 1000 mg. He was also taking Lantus 15 units once a day. He was instructed to contact his primary care provider reference the nausea, vomiting and diarrhea. (Dept Ex. A, pp 17-21).
14. On September 4, 2012, Claimant saw his primary care physician due to abdominal pain. Associated symptoms included changes in appetite, diarrhea, nausea, fatigue, and weight loss. Claimant was in moderate distress due to pain. Overall appearance was ill appearing. Claimant's physician completed a Medical Needs form on Claimant's behalf. Claimant was diagnosed with H. Pylori and hepatitis C. The physician indicated Claimant needed medical assistance with meal preparation, shopping, laundry, and housework. The physician opined that Claimant could not work at his usual occupation and indefinitely could not work at any other job. (Dept Ex. A, pp 12-13; 49-52).

15. On October 12, 2012, Claimant went to the emergency department presenting with abdominal pain. He stated he was light headed and had recently had helicobacter pylori. Claimant reported the severe cramping came back after he finished the antibiotics. Claimant appeared to be in mild distress. Claimant was diagnosed with gastritis and discharged in improved condition. (Dept Ex. B, pp 2-4).
16. On October 29, 2012, Claimant was transported to the emergency department by ambulance for stomach pain that radiates into his back and groin. It was noted that Claimant was seen in the ER on 10/12/12 with similar symptoms and tested positive for H. pylori and was given Amoxicillin. Claimant stated that he had one more pill but the pain had not improved at all. Claimant reported that he was nauseas and had vomited 10 times in the last two days. Claimant also had diarrhea, fever/chills, headache, lightheaded/dizzy, nausea, vomiting, and weakness. Claimant was in moderate distress. Claimant was administered Zofran and Dilaudid. Claimant was diagnosed with acute abdominal pain and vomiting. He was discharged in improved condition. (Dept Ex. B, pp 5-12).
17. On January 12, 2013, Claimant underwent a medical evaluation by the Disability Determination Service. Claimant stated that he was diagnosed with diabetes approximately 11 months ago. When he is able to check his blood sugars, they run in the 200-300's. Claimant is supposed to be taking Lantus but is unable to afford his medications. Claimant has never had his eyes examined and stated that he has extremely blurry and decreased vision, worse on the left. He also stated he has paraesthesias in the bilateral fingers and toes. Claimant had no difficulty getting on and off the exam table, heel and toe walking, squatting or hopping. His gait is normal. Claimant has decreased sensation in the bilateral fingertips and toes. The examining physician opined that Claimant did not appear to be physically restricted with regards to ambulating, climbing stairs, or being in the seated or standing position for long periods of time. He had the ability to use his fingers in both hands for fine manipulation tasks. He also had the ability to push, pull, carry, and lift. (Dept Ex. D, pp 6-9).

### **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 is 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 sure, 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).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 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 ineligible 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, this ALJ finds that Claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

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). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant could not do a full range of sedentary work pursuant to Medical Vocational Grid Rule Footnote 201.00(h) due to multiple impairments and his chronic pain which is documented by the medical evidence.

In this case, Claimant's uncontrolled diabetes and chronic pain due to recurrent helicobacter pylori infections are substantiated by the objective medical evidence. This evidence, as already noted, does rise to statutory disability. It is noted that at review claimant's surgery will be assessed as controlling with regards to continuing eligibility.

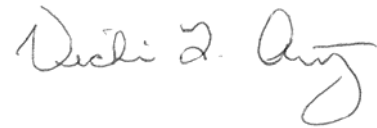
### **DECISION AND ORDER**

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 September 6, 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 May, 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.



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

Date Signed: May 13, 2013

Date Mailed: May 13, 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 mailing 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.

2013-8356/VLA

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:

