

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-58083
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 8, 2014
County: Kalkaska

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 January 8, 2014, 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) 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 31, 2013, Claimant applied for MA and Retro-MA.
- (2) On April 16, 2013, the Medical Review Team (MRT) denied Claimant's application for MA and Retro-MA indicating Claimant's impairment was non-severe. (Depart Ex. A, pp 17-18).
- (3) On April 23, 2013, the department caseworker sent Claimant notice that MA/Retro-MA had been denied.
- (4) On July 11, 2013, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA action.

- (5) On September 9, 2013, the State Hearing Review Team again denied Claimant's application indicating that Claimant retains the capacity to perform simple, unskilled, medium work avoiding hazards such as unprotected heights and dangerous moving machinery. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of hypertension, depression, seizure/convulsions, psychiatric pseudoseizure, chronic back pain, obstructive sleep apnea (OSA), asthma and mucoepidermoid carcinoma.
- (7) On October 27, 2012, Claimant was admitted to the hospital and discharged the following day with a final diagnoses of altered mental status with left-sided numbness and weakness, resulted, likely psychosomatic in origin; mild dehydration improved with intravenous fluid; hypertension; depression; asthma; obstructive sleep apnea; chronic back pain and obesity with a body mass index greater than 30. CVA was ruled out with MRI of the brain. His workup also included an echocardiogram and carotid ultrasound, both of which were unremarkable. He did have a seizure like activity on 10/28/12. The nurse noted Claimant was unresponsive and had tremors of his right upper extremity. This lasted several minutes and resolved. Claimant was discharged home in stable condition after a repeat EEG was normal. (Depart Ex. A, pp 27-28).
- (8) On February 12, 2013, Claimant saw his treating physician for a medication review. Claimant has stopped taking his blood pressure medication because he cannot afford it. He is having seizures every few days. Associated symptoms include altered level of consciousness, aura, focal neurologic deficit, picking at objects, staring and unresponsiveness. He has muscle twitches and "checks out" up to 10 minutes at a time. Sometimes he is able to recall what happened around him but most times he does not recall event. He has numbness in one extremity and a tremor in the other. Claimant was advised that he should not be driving and he should also not be working with his current blackouts because he may be a danger to himself or others. (Depart Ex. A, pp 3-5).
- (9) On March 21, 2013, Claimant followed up with his treating physician after a sudden seizure. The seizure on 3/19/13 lasted 30 to 60 minutes. Associated symptoms included an altered level of consciousness. He also had an episode of tremors in his left arm, headache pain, pressure and sharp stabbing pain over the left eye. He was rocking back and forth. He had breathing problems and was unresponsive. He has had blurry vision in his left eye since the seizure. He stated he is unable to focus at all with his left eye and when both eyes are open he described a visual halo around objects. Claimant was instructed to follow up with an eye doctor. (Depart Ex. A, pp 9-11).

- (10) On May 21, 2013, the results of the 72-hour continuous EEG monitoring showed interictal EEG was normal. There were several different types of episodes captured and during some of them Claimant had altered responsiveness. The associated EEG remained normal with all of the marked episodes of Claimant's events. Based on the study, the recorded episodes appeared nonepileptic in origin. (Depart Ex. A, pp 19-20).
- (11) On June 10, 2013, Claimant underwent a psychological evaluation by the [REDACTED]. His affect was constricted throughout the interview. His mood appeared lethargic. He was considered friendly and cooperative. Diagnosis: Axis I: Depressive Disorder; Mood Disorder due to General Medical Condition; Axis IV: Occupational/Financial/Access to Healthcare; Axis V: GAF=59. Prognosis is guarded. (Depart Ex. A, pp 21-25).
- (12) On October 22, 2013, an ultrasound of Claimant's neck tissue revealed a 1 cm lesion within the left parotid gland corresponding to palpable abnormality. Appearance is consistent with lymph node however, findings on ultrasound are nonspecific. Continued clinical surveillance was recommended as other etiologies could not be excluded on the ultrasound alone. (Claimant Ex. A, p 5).
- (13) On December 31, 2013, Claimant's treating physician diagnosed Claimant with a left neck defect, consistent with surgical resection, obesity, pseudoseizures, depression, asthma, sleep apnea and back pain. The physician noted that Claimant had limitations in sustained concentration due to his blackouts and pseudoseizures and that the blackouts and pseudoseizures increased with his stress level. (Claimant Ex. A, pp 3-4).
- (14) Claimant is a 50 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 290 lbs. Claimant graduated from high school. Claimant last worked in December, 2012.
- (15) 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 seizures, depression, pain, 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 her 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 December, 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 appeared at the hearing stating they had recently found an enlarged lymph node at his previous cancer site which his physician was following closely. Claimant also stated that he was continuing to have 2-3 seizures a week which heretofore they have been unable to diagnose. In addition, medical evidence shows Claimant's seizures have been witnessed by medical personnel and epilepsy has been ruled out. Since October, 2012, Claimant's treating physician has not released Claimant to return to work due to the continuing seizures. 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 stress of working as a cashier is completely outside the scope of his physical and mental abilities given the medical evidence of continuing seizures presented and his treating physician's refusal to release him to return to work.

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 advanced age, Claimant is 50, has a high school equivalent education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of his January 31, 2013, MA/Retro-MA application cannot be upheld.

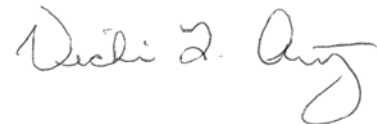
DECISION AND ORDER

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 January 31, 2013, 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 January, 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: January 17, 2014

Date Mailed: January 21, 2014

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:

