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

IN THE MATTER OF:



Reg. No.: 2013-40133 Issue No.: 2009; 4009

Case No.: Hearing Date:

September 4, 2013

County: Monroe

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 t o 431.250; and 45 CF R 205.10. After due notice, a telephon e hearing was held on November 7, 2013, from Lansing, Mich igan. Claimant per sonally appeared and provided t estimony. Participants on behalf of the Department of Human Services (Department) included Assistance Payment Worker

During the hearing, Claimant wa ived the time period for the i ssuance 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.

<u>ISSUE</u>

Whether the Department proper ly denied Claimant's Medica I As sistance (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:

- On August 21, 2012, Claimant filed an application fo r MA/Retro-MA and SDA benefits alleging disability.
- On March 18, 2013, t he Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA for a non-exertional impairment. SDA was denied for lack of duration. (Depart Ex. A, pp 4-5).
- 3. On March 22, 2013, the department ca seworker sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.

- 4. On March 28, 2013, Claim ant filed a request for a hearing to contest the department's negative action.
- 5. On June 171, 2013, the State H earing Review Team (SHRT) found Claimant was not dis abled and retained the capacity to perform simple, unskilled work avoiding hazards su chas unprot ected heights and dangerous moving machinery. (Depart Ex. B, pp 1-2).
- 6. Claimant was appealing the denial of Social Securi ty disability benefits at the time of the hearing.
- 7. Claimant is a 57 year old man whose birthday is is 6'1" tall and weighs 240 lbs.
- 8. Claimant does hav e an alcohol, drug and nic otine history. Claimant testified he stopped smoking, drinking alcohol and using drugs in October, 2010.
- 9. Claimant does not have a driver's license due to his seizures.
- 10. Claimant has a high school education.
- 11. Claimant is not currently working. Claimant last worked in June, 1999.
- 12. Claimant alleges disability on the bas is of epilepsy, Hepatitis C, bipolar disorder and migraines.
- 13. Claimant's impairments have lasted, or are expected to last, continuous ly for a period of twelve months or longer.
- 14. Claimant's complaints and allegations concer ning his impairm ents 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 estab lished by Title XIX of the Social Sec urity 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 A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, et seq.,

and MAC R 400.3151-400.3180. Department polic ies ar e found in the Bridg es Administrative Manua I (BAM), the Bridges Elig ibility Manual (B EM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

(b) A person with a phy sical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disa bility shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

In order to receive MA benefits based upon disa bility or blindness, claimant must be disabled or blind as defined in T itle 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 progr am designated to help public assistance claimants pay their medical expenses. Mi chigan 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 subs tantial gainful activ ity by reason of any medically dete rminable physical or mental impairment which c an be expect ed to result in death or which has lasted or can be expect ted 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 shequential 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 CF R 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 dis abled regardless of your medical condition or your age, education,

- and work experienc e. 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 deat h? 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 clie nt'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 analys is continues to Step 5. Sections 200.00-204.00(f)?
- 5. Does the client hav e the Residual Func tional 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 consider s 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 a pproved. 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 im pairment(s) and how seve re 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 di sease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not al one 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 dis abled 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 demons trable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analys is herein, Claimant is not ine ligible 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 min imus* standard. Ruling a ny 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 analys is 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 applie s the biographical data of the applic ant 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 Hum an Services*, 735 F2d 962 (6 th Cir, 1984). At that point, the burden of proof is on the state to prove by substant ial evidence that Claim ant has the residual functional capacity for substantial gainful activity.

The medic al information indicat es that Claim ant suffers from epilepsy, Hepatitis C, bipolar disorder and migraines.

Claimant currently resides in a home for the disabled and has been residing there since August, 2012. On August 18, 2012, Claimant's treating physician diagnosed Claimant with a seiz ure disorder, majo r depression and Hepatitis C. The physic ian indicated Claimant's condition was deteriorating.

On October 6, 2012, Claimant underwent a p sychological evaluation on behalf of the Diagnosis: Axis I: Bipolar Dis order; Poly-substance dependence including alcohol, co caine, heroin and marij uana in remission; Axis III: Seizure Disorder; Axis IV: Severe health and employment problems; Axis V: GAF=50. According to the DSM-IV, 4 th Ed., a GAF of 50 indicates ser ious symptoms (e.g., suicidal ideation, severe obsessi onal rituals, frequent shoplif ting) or any serious impairment in social, occupational, or sc hool functioning (e.g., no friends, unable to keep a job, cannot work).

In February, 2013, Claimant saw his primary care physician for a headache, blurred vision, speech difficulty, balance problems, numbness, muscle weakness and a history of seizures and a back injury. Claimant was diagnosed with seizures, migraines and depression.

In June, 2013, Claimant presented to the emergency department after several seizures. A CT was performed and when compared to an earlier study dated 8/24/12, revealed a suspected tiny chronic lacunar infarct involving the left caudate nucleus. His ECG was abnormal. He was hospitalized and had a consultation with a neurologist. The neurologist indicated Claimant has had epilepsy since the age of 12, but Claimant feels the seizures have worsened significantly since the mid-1980's when he was using cocaine. He has had extensive testing in the past and is on Torileptal which had just been increased. Claimant was released after two days in stable condition.

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 you limitations?" 20 CFR 416.945;
- (2) age, educ ation, and wo rk experience, 20 CF R 416.963-.965; and
- (3) the kinds of work which exist in signific ant numbers in the national ec onomy which the claimant could perfo rm 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, Cl aimant 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 records and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge find s that Claim ant's exertional and non-exertional impairment s 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 Securit y Ruling 83-10; Wilson v Heckler, 743 F2d 216 (1986). Bas ed on Claimant's vocational profile (advanced age, Claimant is 57, has a high school educ ation and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 201.04 as a guide. Conseq uently, the department's denial of his August 21, 2012, MA/Retro-MA and SDA application cannot be upheld.

A person is consider ed disabled for purposes of SDA if the person has a physical or mental impairment which meet is federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefit is 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 SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof 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 Augus t 21, 2012, MA/Retro-MA and SDA application, and shall awar d 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 rev iew Claimant's medica I cond ition 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

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Date Signed: February 11, 2014

Date Mailed: February 11, 2014

NOTICE OF AP PEAL: The claimant may appeal the Dec ision and Order to Circu it Court within 30 days of the receipt of the Decision and Order or, i f a timely Request for Rehearing or Reconsiderati on was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 disc overed evidence that existed at the time of the or iginal 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 clai mant 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.

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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: