

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

**IN THE MATTER OF:**



Reg. No.: 2013-56670  
Issue No(s): 2009; 4009  
Case No.: [REDACTED]  
Hearing Date: November 7, 2013  
County: Newaygo

**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 7, 2013, from Lansing, Michigan. Claimant personally appeared and provided testimony. 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 16, 2014, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

**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) 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 May 1, 2013, Claimant applied for MA, Retro-MA and SDA alleging disability.
- (2) On June 20, 2013, the Medical Review Team denied Claimant's application indicating Claimant was capable of performing other work. SDA was denied due to lack of duration. (Depart Ex. A, pp 11-12).

- (3) On June 27, 2013, the department case worker sent Claimant notice that MA/Retro-MA and SDA had been denied.
- (4) On July 1, 2013, Claimant filed a request for a hearing to contest the department's negative MA/Retro-MA and SDA actions.
- (5) On August 29, 2013, the State Hearing Review Team again denied Claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of application/surgery. (Depart Ex. B).
- (6) Claimant has a history of coronary artery disease, a myocardial infarction, calcified nodes, calcified granulomas, post quadruple bypass surgery, coronary atherosclerosis, diabetes and blood clots.
- (7) On April 4, 2013, Claimant was admitted to the emergency department after presenting there with chest pain that occurred at rest. He was found to have troponins that were elevating. He was admitted and taken for cardiac catheterization. Cardiac catheterization showed multivessel coronary artery disease, so cardiothoracic surgeons were consulted for coronary artery bypass grafting. His admitting x-ray showed a hilar mass, so he went for a CT of the chest, which showed calcified nodes and calcified granulomas. A pulmonary consult was also obtained. His pulmonary function tests were normal. After admission, Claimant was found to be depressed. A psychiatry consult was obtained and they recommended starting sertraline. After his preoperative workup was complete, he was taken to the operating room where he underwent coronary artery bypass grafting X4. Following his operation, he was transferred to the cardiovascular recovery unit and weaned from the mechanical ventilator support and extubated. On postoperative day 1, he was hemodynamically stable, actually with some hypertension, so he was started on a beta-blocker. He was transferred to the Heart Center. He had a relatively uneventful postoperative course. On postoperative day 2, his Cordis and pacing wires were discontinued. On postoperative day 3, his mediastinal chest tube was discontinued and on postoperative day 4, his final pleural chest tubes were discontinued. He was continued on Lasix throughout his postoperative course for diuresis to treat volume overload. He was discharged to home on postoperative day 6. He was tolerating a diet, ambulating in the halls, his pain was controlled and he was discharged home. Discharge Diagnosis: Non-ST elevated myocardial infarction, hypertension, tobacco abuse, obesity, new hilar mass on admitting chest x-ray, elevated blood glucose level on admission, obstructive sleep apnea diagnosed about 5 years ago, found to have multivessel coronary artery disease status post coronary artery bypass grafting, newly diagnosed type 2 diabetes mellitus, postoperative stress hyperglycemia, postoperative blood loss anemia and depression. (Depart Ex. A, pp 59-167).

- (8) On July 24, 2013, Claimant presented to his primary care physician with abdominal pain. Claimant stated that he feels “out of whack” but cannot explain how exactly. The assessment showed his abdominal pain improved and he was to continue with good nutrition. Labs were ordered for his diabetes and he was instructed to continue exercising. (Depart Ex. C, pp 210-212).
- (9) On August 3, 2013, Claimant presented to the emergency room with unstable angina symptoms and an abnormal EKG. His past medical history includes multivessel coronary artery disease with recent bypass surgery in April, 2013. Bypass anatomy includes saphenous vein graft to the obtuse marginal branch, saphenous vein graft to the 2<sup>nd</sup> obtuse marginal branch, LIMA to the LAD, and a vein graft to the posterior descending artery. Ultimately, he was taken to the catheterization lab where access was gained via the right common femoral artery. Angiography revealed patent grafts. There was a new lesion in the mid to distal portion of the post-anastomosis left anterior descending artery which was treated with balloon angioplasty followed by implantation of a 2.25 x 28 mm stent in the proximal portion and a 2.5 x 38 mm in the distal portion. Claimant tolerated the procedure well. He was ready to go the next day but complained of severe pain in his right common femoral artery site out of proportion to the physical exam. An ultrasound revealed a pseudoaneurysm. IR was consulted for injection. He was placed on bedrest which he was not compliant with. He did have the injection of his 3.2 x 1.2 x 1.5 pseudoaneurysm. The next day it was thrombosed. He was stable for discharge on 8/18/13. Discharge Diagnosis: Unstable angina, multivessel coronary artery disease status post angioplasty and stenting of the mid to distal left anterior descending artery, right common femoral artery pseudoaneurysm, normal left ventricular ejection fraction, hypertension, dyslipidemia, ongoing tobacco abuse and diabetes. (Depart Ex. C, pp 8-67, 182-209).
- (10) Claimant is a 51 year old man whose birthday is [REDACTED]. Claimant is 5’11” tall and weighs 285 lbs. Claimant has a high school equivalent education. Claimant last worked in January, 2010.
- (11) Claimant was applying for 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).

In Claimant's case, the ongoing fatigue, chest pains and 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 his 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 January, 2010; 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 impairments upon his ability to perform basic work activities. 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 rigors of working as a router are completely outside the scope of his physical abilities given the medical evidence presented.

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 (6<sup>th</sup> 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 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 51, has a high school equivalent education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA and SDA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of his May 1, 2013, MA/Retro-MA and SDA application cannot be upheld.

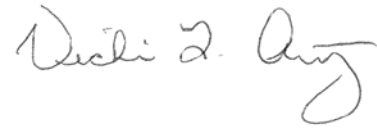
### **DECISION AND ORDER**

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 and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's May 1, 2013, 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.**



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

Date Signed: February 3, 2014

Date Mailed: February 4, 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.



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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:

