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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-25212
Issue No.: 2009
Case No.: [redacted]
Hearing Date: May 29, 2014
County: Macomb-20

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 3-way telephone hearing was held from Lansing, Michigan. Claimant, represented by [redacted] of [redacted] appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator [redacted].

ISSUE

Whether the Department properly denied Claimant's Medical Assistance (MA) and Retro-MA 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 August 1, 2013, Claimant filed an application for MA/Retro-MA benefits alleging disability.

2. On November 5, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA due to lack of duration. (Dept Ex. A, pp 3-4).

3. On November 13, 2013, the Department sent Claimant notice that his application for MA/Retro-MA had been denied.

4. On January 31, 2014, Claimant filed a request for a hearing to contest the Department's negative action.

5. On March 21, 2014, the State Hearing Review Team (SHRT) denied MA/Retro-MA relying on a Social Security Denial dated 10/23/13. (Depart Ex. B).

6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

7. Claimant is a 51 year old man born on [redacted]. Claimant is 5'10" tall and weighs 355 lbs.

8. Claimant does not have an alcohol, drug or nicotine history.

9. Claimant does not have a driver's license.

10. Claimant has a high school education.

11. Claimant is not currently working. Claimant last worked in March, 2012, as a custodian.

12. Claimant alleges disability on the basis of morbid obesity, bilateral lower leg localized swelling, anxiety, ascites, asthma, benign essential hypertension, anal fissure, obstructive sleep apnea, coronary artery disease with history of myocardial infarction, chronic obstructive pulmonary disease, depression, edema, gastroesophageal reflux disease, fatigue, restless legs syndrome and type 2 diabetes mellitus.

13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.

14. Claimant's complaints and allegations concerning his impairments 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 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).

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 ultrasounds, 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).

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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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.

Claimant has been medically described as morbidly obese (Exhibit C, pp. 15-16) which condition likely exacerbates his impairments.

> Obesity is a medically determinable impairment that is often associated with disturbance of the respiratory system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity. Listing 3.00(I).

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). Claimant's past work history is that of a

custodian and as such, Claimant would be unable to perform the duties associated with his past work. Likewise, Claimant's past work skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

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). 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.

The medical information indicates that Claimant suffers from morbid obesity, bilateral lower leg localized swelling, anxiety, ascites, asthma, benign essential hypertension, anal fissure, obstructive sleep apnea, coronary artery disease with history of myocardial infarction, chronic obstructive pulmonary disease, depression, edema, gastroesophageal reflux disease, fatigue, restless legs syndrome and type 2 diabetes mellitus.

Claimant testified credibly that he has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. Claimant uses an emergency inhaler and has an appointment to see a pulmonary specialist for a new CPAP machine and breathing treatments. Claimant stated his diabetes is uncontrolled with numbers around 380 and 400 the last time it was checked.

On [redacted], Claimant saw his primary physician for bilateral knee and hip pain. Claimant had diffuse joint pain, joint stiffness, pain in other joints and was limping. Claimant was morbidly obese. Auscultation of heart was abnormal, RRR II/VI SEM S1 & S2. Examination of extremities revealed 2-3+4/4+ bilateral pitting edema. His gait and station were abnormal. He had trouble getting on the examination table.

On [redacted], Claimant underwent a psychological assessment by the [redacted] Diagnosis: Axis I: Generalized anxiety disorder; Major depressive disorder, recurrent, moderate; Attention-Deficit/Hyperactivity disorder; Axis IV: Severe; Axis V: GAF=55. The psychologist opined that Claimant appeared capable of managing his own income. He was noted to have difficulty carrying out one-step instructions. He was occasionally noted to respond to noises in the clinic. He would appear to have difficulty maintaining standards of safety issues and work routines due to medical rather than mental health issues. He would appear to have difficulty with social interactions. Psychological testing was recommended to determine strengths and limitations and current cognitive functioning. An evaluation by a psychiatrist with a medication review was strongly recommended. The psychologist opined that at this time, Claimant presents with medical issues, anxiousness and depression.

On [redacted], Claimant's treating psychiatrist completed a Mental Residual Functional Capacity Assessment. Claimant is markedly limited in his ability to understand and remember detailed instructions; carry out detailed instructions; maintain

attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances and complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The psychiatrist noted that due to Claimant's multiple physical ailments he has difficulty walking, standing, lifting and getting out of breath easily. He also has some difficulty focusing. Due to the depression, he feels hopeless, helpless, and unmotivated. The psychiatrist opined that all these result in Claimant's inability to engage in gainful employment.

Claimant is 51 years old, with a high school education. Claimant's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work 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). Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

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.

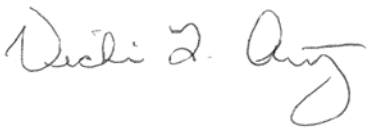
Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's August 1, 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 June, 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: June 11, 2014

Date Mailed: June 11, 2014

NOTICE OF APPEAL: The claimant may appear 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: [redacted]