

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

IN THE MATTER OF:



Reg. No.: 2014-13446
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 27, 2014
County: St. Clair

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 March 27, 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 properly denied Claimant's application for the Medical Assistance (MA) and Retroactive Medical Assistance (Retro-MA) programs?

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 July 24, 2013, Claimant applied for MA/Retro-MA benefits alleging disability.
- (2) On November 4, 2013, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA application indicating Claimant was capable of performing other work. (Depart Ex. A, pp 1-2).
- (3) On November 4, 2013, the Department sent Claimant notice that his application was denied.
- (4) On November 15, 2013, Claimant filed a request for a hearing to contest the Department's negative action.

- (5) On January 15, 2014, the State Hearing Review Team (SHRT) upheld the denial indicating Claimant retained the capacity to perform past relevant work as an office worker. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of chronic thoracic spine pain, scoliosis and depression.
- (7) Claimant has a driver's license and is able to drive.
- (8) Claimant is a 35 year old man whose birthday is [REDACTED]. Claimant is 6'2" tall and weighs 170 lbs.
- (9) Claimant has a high school education.
- (10) Claimant last worked in July, 2010.
- (11) Claimant was appealing the denial of 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).

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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he has not worked since July, 2010. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to chronic thoracic spine pain, scoliosis and depression. As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to chronic thoracic spine pain, scoliosis and depression.

In February, 2013, Claimant had a psychological evaluation by the [REDACTED]. The examining psychologist opined that clinically, Claimant presented with mild depression and anxiety symptoms and his affect was reactive. His emotional distress appears largely associated with chronic pain and corresponding lifestyle changes. Although some panic attack symptoms were described. Claimant's symptom reports do not appear to meet full criteria for panic attacks and/or Panic Disorder. Claimant's intellectual functioning is estimated to be at least high average.

Although he performed within normal limits on most mental status inquiries, his performance on those tasks suggest he may be experiencing mild impairments in concentration. Claimant does not currently participate in therapeutic or psychiatric treatment, although he did acknowledge benefit from his psychotropic medications, which are likely beneficial in attenuating his depression and anxiety symptoms. Descriptions of Claimant's activities suggest he is able to independently engage in a number of adaptive activities with the aid of prompts and organizational tools. Similar individual are able to engage in a number of simple or familiar activities, but may have difficulty following complex directions under time constraints, and may need a longer period of time to reach complex decisions. Social functioning appears generally intact, and Claimant is likely to interact adequately with coworkers, supervisors and the general public. Claimant's hygiene, grooming and clothing selection is appropriate and he appears able to sustain a neat, orderly and clean appearance. Claimant was diagnosed with: Axis I: Adjustment Disorder Mixed, with Anxiety and Depressed Mood, Chronic; Axis III: Scoliosis, Chronic Thoracic Pain, Color Blindness; Axis IV: Unemployment, Financial Strain, Limited Social Support; Few Friendships, Multiple Losses; Axis V: GAF=62.

In March, 2013, Claimant underwent an independent medical evaluation by the [REDACTED]. The physician opined that Claimant's upper extremities have normal function, strength and range of motion. Claimant's tolerance to activity with the upper extremities seems to be somewhat decreased. There was mild weakness in both upper extremities. He also has a fine resting tremor with both hands, but seems to be able to maintain a normal grip. The lower extremities have normal function, strength and range of motion. Claimant seems to have limitations in activities, especially anything involving lifting, bending or stooping causing pain to the thoracic spine. He does seem capable of nonstrenuous activities without excessive walking or standing. Claimant's abilities to perform work-related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and travelling as well as pushing and pulling heavy objects is at least moderately impaired.

In October, 2013, Claimant's treating physician completed a Medical Examination Report diagnosing Claimant with chronic pain and scoliosis. The physician opined Claimant's condition was stable and he was limited to lifting 10 pounds occasionally, standing or walking less than 2 hours in an 8-hour workday, with no reaching, pushing or pulling. Mentally, the physician indicating Claimant had no limitations and was capable of meeting his own needs in the home.

Listing 1.00 (musculoskeletal system) and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Claimant's limitations do not satisfy the terms of Listing 1.04 for disorders of the back. Claimant is not functionally limited and the evidence does not support the medical findings required by Listing 1.04 such as a condition that results in compromise of a nerve root with evidence of nerve root compression, spinal arachnoiditis or lumbar spinal stenosis resulting in pseudoclaudication established by findings on appropriate medically acceptable imaging and manifested by chronic pain and weakness. In addition, Claimant's limitations do not satisfy the terms of Listing 1.02 for major dysfunction of a joint. Claimant is not functionally limited and the evidence does not support the required

medical findings required by Listing 1.02 such as gross anatomical deformity and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint. Objective tests do not show joint space narrowing, bony destruction, or ankylosis of the affected joint with a resulting inability to perform fine and gross movements effectively. Claimant's limitations also do not satisfy the terms of Listing 12.00.

Based on the foregoing, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether Claimant has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If Claimant has the residual functional capacity to do his past relevant work, then Claimant is not disabled. If Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with chronic thoracic spine pain, scoliosis and depression. Claimant has a number of symptoms and limitations, as a result of these conditions.

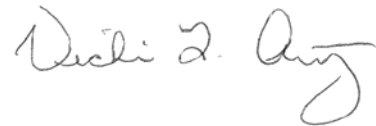
The fourth step of the analysis to be considered is whether Claimant has the ability to perform work previously performed by Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent Claimant from doing past relevant work. In the present case, Claimant's past employment was an office worker. Claimant's impairments fail to prevent Claimant from being able to perform the duties necessary for past employment. This Administrative Law Judge finds, based on the medical evidence and objective, physical and psychological findings, that Claimant is capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant not disabled for purposes of the MA-P/Retro-MA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



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

Date Signed: April 14, 2014

Date Mailed: April 15, 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.

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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:

