

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-014831
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 6, 2015
County: Wayne-District 19

ADMINISTRATIVE LAW JUDGE: Vicki 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 on January 6, 2015, from Lansing, Michigan. Claimant, represented by [REDACTED], of [REDACTED], personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Medical Contact Worker [REDACTED].

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 24, 2014, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On June 25, 2014, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA, based on a lack of duration.
3. On October 21, 2014, the Department sent Claimant notice that his application for MA/Retro-MA had been denied.
4. On November 5, 2014, Claimant's Authorized Hearing Representative filed a request for a hearing to contest the Department's negative action.
5. Claimant is a 63 year old man whose birthday is [REDACTED].
6. Claimant is 5'7" tall and weighs 190 lbs.

7. Claimant does not have a drug, alcohol or nicotine problem.
8. Claimant has a driver's license and is able to drive.
9. Claimant has a tenth grade education.
10. Claimant last worked in December, 2013.
11. Claimant alleges disability on the basis of bladder cancer, status post bypass surgery, diabetes, neuropathy, blindness in his right eye, gastroesophageal reflux disease, hypertension and anxiety.
12. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
13. 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

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 to provide medical evidence showing that he/she has an impairment(s) and how severe it is during the time that he/she is claiming disability. 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).

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. The medical information indicates that Claimant suffers bladder cancer, status post bypass surgery, diabetes, neuropathy, blindness in his right eye, gastroesophageal reflux disease, hypertension and anxiety. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets duration and severity. The analysis continues.

On [REDACTED], Claimant presented to the emergency department complaining of an inability to urinate. Associated symptoms included abdominal pain. His urinalysis was abnormal. He reported a longstanding problem with passage of kidney stones, but that was always pain free and not associated with urinary retention. In the emergency department he was asymptomatic and able to urinate.

On [REDACTED], Claimant presented to the emergency department with flank pain and hematuria. He was diagnosed with acute urinary retention, probably secondary to a kidney stone and an acute urinary tract infection. He was discharged and referred to his primary care physician.

On [REDACTED], Claimant presented to the emergency department with gross hematuria. Claimant thought he had a kidney stone and previously had gross hematuria. A Foley catheter was placed. He had been referred to a urologist and advised to have a cystoscopy done but he did not comply because he did not have insurance. On [REDACTED], Claimant underwent cystoscopy and evacuation of clots. The blood clots were seen in the bladder as well as multiple papillary bladder tumors. The tumors were extensive and throughout the right and left lateral wall. He also had them on the anterior wall. On [REDACTED], Claimant had acute urinary retention secondary to gross hematuria with clots and mild benign prostatic hypertrophy. Recommendations: Urinalysis, culture and specimen and cystoscopy, fulguration of bleeding points and possible bladder biopsy. Claimant was discharged on [REDACTED], [REDACTED] with a diagnosis of bladder cancer. He had been taking Toradol and aspirin, and the urologist wanted to give him over 7 days without aspirin before performing the resection for bleeding issues. Claimant was to keep the Foley in, and was scheduled the following week for the tumor resection.

On [REDACTED], Claimant presented to the emergency department and was diagnosed with acute urinary retention. The examining physician indicated Claimant had a cystoscopy on [REDACTED] for evacuation of clots which also showed multiple bladder tumors. Claimant had an indwelling urethral catheter placed on [REDACTED], which remained in place. Claimant underwent cystoscopy and transurethral resection of the bladder. Diagnosis: Bladder tumor, larger than 5 cm, extending throughout the whole bladder neck circumferentially involving the anterior wall, with probable muscle wall invasion. The surgeon opined that in light of the extent of disease and its evidence of what appeared to be grossly evident muscle invasion, it was decided to send the specimen to pathology and Claimant would ultimately need a cystectomy and diversion so further resection would not advance his care.

On [REDACTED], the surgical pathology reports found the tumor was malignant.

On [REDACTED], Claimant met with his oncologist for his post-operative visit. Claimant was diagnosed with transitional cell carcinoma of the bladder. He reported blood in his urine, high blood pressure and elevated cholesterol. Urinalysis showed an abnormal creatinine level. He was recommended for cystoscopy transurethral resection of the bladder restaging when cleared.

On [REDACTED], Claimant underwent formal staging and resection. All visible tumors were removed down to the superficial layers because this was diagnosed without muscle invasion. The physical exam revealed an abdomen soft Foley with blood tinged urine. A cystoscopy was unable to be performed due to meatal stenosis. The tumors were malignant. He was discharged the following day and restricted to his house and no driving until seen back in the office the following week.

On [REDACTED], Claimant followed up with his oncologist. Claimant's symptoms included dribbling urine, frequency, hematuria and interrupted urinary flow. Claimant stated his symptoms were worsening. The modifying factors included urethral dilation. His voiding frequency was every hour and the stream was described as dribbling. He was diagnosed with moderate stenosis of the meatus. Claimant underwent a meatal dilation filiforms and followers procedure used to dilate the meatus from 8 French to 14 French.

On [REDACTED], while at a follow-up visit with his oncologist, Claimant was unable to provide a urine sample. He was scheduled for a cystoscopy and transurethral resection on [REDACTED].

On [REDACTED], Claimant underwent cystoscopy and transurethral resection of the bladder for restaging, meatal stenosis with very fine recurrences in the posterior wall and floor. He has had two-stage resection. He returned for final biopsies as the previous tissue did not include a muscle biopsy. The specimen was found to be malignant.

On [REDACTED], Claimant followed up with his oncologist. The urinalysis showed an abnormal creatinine level. Claimant was instructed to self-catheterize daily to keep the meatus open.

On [REDACTED], Claimant underwent a flexible cystoscopy. The procedure revealed 2 small areas of erythema on the right lateral wall and floor. The urinalysis showed an abnormal creatinine level. He is scheduled for his next cystoscopy in 3 months.

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.

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). Based on Claimant's continuing treatment

for bladder cancer, his uncontrolled diabetes and hypertension in addition to being blind in one eye and losing vision in the remaining eye, Claimant can no longer perform past relevant works and his skills will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final 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 records and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's 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 retirement age, Claimant is 63, with a tenth grade education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA benefits are approved using Vocational Rule 203.02 as a guide. Consequently, the Department's denial of his March 24, 2014, 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.

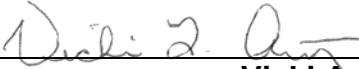
Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's March 24, 2014, 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, 2016, 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 Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/9/2015**

Date Mailed: **1/9/2015**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

