



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: March 23, 2018
MAHS Docket No.: 18-001126
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following Petitioner'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. After due notice, an in-person hearing was held on March 20, 2018, from [REDACTED] Michigan. Petitioner personally appeared and testified. The Petitioner was represented by [REDACTED] representative for [REDACTED]. Petitioner submitted 28 exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED] testified on behalf of the Department. The Department submitted 274 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and Retroactive MA (Retro-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 April 19, 2017, Petitioner applied for Disability Medicaid. [Dept. Exh. 3-14].
2. On December 18, 2017, the Medical Review Team (MRT) denied Petitioner's application for MA-P and Retro-MA indicating that he was capable of past relevant work, pursuant to 20 CFR 416.920(E). [Dept. Exh. 18-24].

3. Petitioner has a history of chronic diastolic congestive heart failure, angina, carotid disease, cerebral vascular accident, dyspnea, irritable bowel syndrome, osteoarthritis, diverticulitis, colon resection secondary to diverticulitis, sleep apnea, high blood pressure, high cholesterol, peripheral edema and fibromyalgia.
4. On October 20, 2016, Petitioner followed up with his physician regarding his chronic diastolic congestive heart failure. Petitioner reported looking online for a motorized scooter because his exertional dyspnea was getting so bad. Petitioner was positive for congestion, chest tightness, shortness of breath, leg swelling, dizziness and light-headedness. Petitioner had a 3/6 systolic heart murmur. He exhibited 2+ pitting edema in his lower extremities. [Dept. Exh. 105-113].
5. On December 1, 2016, Petitioner met with his physician for his follow-up appointment regarding his chronic diastolic congestive heart failure. Petitioner reported he is having trouble with his balance, usually when he goes from sitting to standing. Petitioner stated a friend had loaned him a motorized scooter. He reported that in spite of the medication, his exertional dyspnea was getting worse. Petitioner was positive for fatigue, chest tightness, shortness of breath, and chest pain. He exhibited 2+ pitting edema in bilateral lower extremities. [Dept. Exh. 114-121].
6. On January 12, 2017, Petitioner had a follow-up appointment with his physician for chronic diastolic congestive heart failure. Petitioner reported problems swallowing solid foods and he still had exertional dyspnea with minimal exertion. He also complained of dizziness going from sitting to standing. He had 3+ bilateral edema in his lower extremities. The physician noted that Petitioner needed a referral to cardiology and a swallow study. [Dept. Exh. 122-129].
7. On February 24, 2017, Petitioner followed up with his physician for chronic diastolic congestive heart failure. Petitioner had shortness of breath, leg swelling and edema. [Dept. Exh. 130-136].
8. On April 14, 2017, Petitioner returned to his physician for his follow-up appointment regarding his chronic diastolic congestive heart failure. Petitioner reported that his breathing was getting a bit worse, in that just taking off his sweater or climbing the few stairs up to the office made him winded. He was also experiencing fatigue and shortness of breath. A murmur of 3/6 systolic was heard. The physician indicated that Petitioner needed cardiology intervention soon. [Dept. Exh. 137-145].
9. On July 12, 2017, Petitioner followed up with his physician regarding his chronic diastolic congestive heart failure. The physician noted Petitioner had lost 15 pounds since his last visit. Petitioner reported that taking off his sweater or climbing the few stairs to the office still made him winded. The physician noted Petitioner had chest tightness, shortness of breath, leg swelling, a heart murmur and exhibited edema. [Dept. Exh. 146-154].

10. On November 27, 2017, Petitioner underwent an independent medical evaluation on behalf of the Department. Based on the evaluation, Petitioner had subtle findings of peripheral neuropathy in the lower extremities presumably due to leg injuries. He had some mild degenerative arthropathy in the knees. He had difficulty doing orthopedic maneuvers which appeared to be more of a balance issue than arthritis. He compensated with a guarded gait. The use of an assist device at least on uneven ground would be advised. He appeared to have a tendency to fall. He had an unsteady station with Romberg testing. It was possible this was due to his prior cerebral vascular accident. Regarding his dyspnea, congestive heart failure and hypertension, Petitioner had a fixed splint S2 with a Grade II/VI systolic murmur. He was on aggressive diuretic therapy and blood pressure management. His blood pressure was borderline elevated. He used a CPAP machine for sleep apnea. The physician opined that Petitioner is at risk for further deterioration over time. [Dept. Exh. 48-53].
11. On January 3, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice that his application was denied effective April 1, 2017 ongoing. [Dept. Exh. 15-17].
12. On January 19, 2018, Petitioner submitted a hearing request, contesting the denial of MA and Retro-MA. [Dept. Exh. 2].
13. Petitioner is a 62-year-old man, born on [REDACTED]. He is 5'7 and weighs 254 pounds. He has a college education. He currently works part-time, two to four hours a week, as an insurance salesman. [Dept. Exh. 163].
14. Petitioner was appealing the denial of Social Security disability benefits at the time of the hearing.
15. Petitioner's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
16. Petitioner'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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and 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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner works part-time, four to six hours a week, selling insurance. 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 petitioner's age, education, or work experience, the impairment would not affect the petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to chronic diastolic congestive heart failure, angina, carotid disease, cerebral vascular accident, dyspnea, irritable bowel syndrome, osteoarthritis, diverticulitis, colon resection secondary to diverticulitis, sleep apnea, high blood pressure, high cholesterol, peripheral edema and fibromyalgia.

Petitioner testified credibly that he has a very limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. He reported that he has shortness of breath, is dizzy, scatterbrained and tired, requiring the use of a motorized chair. Petitioner explained that if he sits too long, his legs go numb and that if he closes his eyes, he loses his balance.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner 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 Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner 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. Petitioner has alleged physical disabling impairments due to chronic diastolic heart failure.

Listing 4.02 (Chronic heart failure) was considered in light of the objective evidence. Based on the Listing 4.02(A)(2), Petitioner's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in his ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 4.02 requires diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure); resulting in persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably

one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual.

As indicated by Petitioner during his testimony, and supported by the evidence of record, Petitioner has chronic diastolic heart failure. Accordingly, this Administrative Law Judge finds Petitioner's impairments meet or equal Listing 4.02 and concludes Petitioner is disabled for purposes of the MA and Retro-MA programs. Consequently, the Department's denial of his April 19, 2017, MA/Retro-MA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner disabled for purposes of the MA and Retro-MA benefit programs.

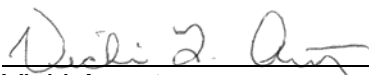
Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. The Department shall process Petitioner's April 19, 2017, MA and 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 Petitioner's medical condition for improvement in March 2019, unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/nr



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]