

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2010-23749
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 9, 2010
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Clinton Township, Michigan on Wednesday, June 9, 2010. The Claimant appeared and testified along with [REDACTED]. [REDACTED] appeared on behalf of the Department. [REDACTED] observed the proceedings.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) and State Disability Assistance ("SDA") benefit program?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P and SDA benefits on January 27, 2009.

2. On February 8, 2010, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 47, 48)
3. The Department sent an eligibility notice to the Claimant informing him that he was found not disabled.
4. On February 23, 2010, the Department received the Claimant’s Request for Hearing.
5. On March 16, 2010, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairments are due to chronic back/neck pain, arthritis, hypertension, Hepatitis C, and cancer.
7. The Claimant’s alleged mental impairment(s) are due to depression, anxiety, panic disorder, and agoraphobia.
8. At the time of hearing, the Claimant was 47 years old with an [REDACTED] birth date; was 5’ 9” in height; and weighed approximately 182 pounds.
9. The Claimant is a high school graduate with an employment history in construction and as a machine operator.
10. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period fo 12 months or longer.

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 of Human Services (“DHS”), formerly known as the Family Independence Agency, 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 (“BRM”).

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 (i.e. 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 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 three to step four. 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 four and five. 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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR

416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant 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, the Claimant alleges physical and mental disability on the basis back/neck pain, arthritis, hypertension, Hepatitis C, kidney cancer, depression, anxiety, panic disorder, and agoraphobia.

As a preliminary matter, the Claimant submitted progress notes from [REDACTED] through [REDACTED], which document treatment for hypertension, Hepatitis C, osteoarthritis, nausea, left knee pain, chronic neck/back pain, hyperkalemia, panic attacks, and depression/anxiety.

On [REDACTED], the Claimant was evaluation for his abnormal liver biochemistries. Continued treatment was recommended.

On [REDACTED], the Claimant tested positive for Hepatitis B.

On [REDACTED], the Claimant presented to the hospital with complaints of weight loss, abdominal pain, and Herne-positive stools. A colonoscopy and esophagogastroduodenoscopy were performed without complication. The post operative diagnoses were sigmoid and descending colon diverticulosis and erosive duodenitis.

On [REDACTED], a psychological assessment was performed. The Claimant was diagnosed with generalized anxiety disorder, mood disorder (not otherwise specified), major depressive disorder, recurrent, attention deficit/hyperactivity disorder (inattentive type), dysthymic disorder, and alcohol dependence. The Global Assessment Functioning ("GAF") was 40.

On [REDACTED], a MRI of the abdomen was performed which documented a small cyst measuring 3-4 mm.

On [REDACTED], the Claimant attended a follow-up appointment for his Hepatitis C. An ultrasound revealed a lesion on the left kidney. An abdominal MRI was abnormal. A CT scan was recommended.

On [REDACTED], a psychiatric evaluation was performed. The Claimant was diagnosed with major depressive disorder, recurrent, panic disorder with agoraphobia, bipolar disorder, and history of alcohol and cocaine abuse. The GAF was 45.

On [REDACTED], a CT of the abdomen revealed a renal lesion.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were Hepatitis C, osteoarthritis, chronic back pain, depression/anxiety, panic attacks, hypertension, and elevated liver enzymes. The physical examination documented fatigue, abnormal and slow gait, diffuse abdominal pain, chronic back pain, depressed mood, and panic attacks. The Claimant's condition was deteriorating and he was limited to occasionally lifting/carrying of less than 10 pounds; standing and/or walking less than 2 hours in an 8 hour work day; sitting less than 6 hours during an 8 hour work day; but able to perform repetitive actions with his extremities. The Claimant required a cane for ambulation.

On [REDACTED], a Mental Residual Functional Capacity Questionnaire was completed on behalf of the Claimant. The diagnoses were major depressive disorder, recurrent, panic disorder, agoraphobia, history of substance abuse (2005), and a GAF of 45. The Claimant was compliant with his medication regime. The Claimant was unable to meet competitive standards in all areas with the exception of a few areas where he was not able to function. The Claimant's sign/symptoms impacted 31 of the 56 listed areas.

On [REDACTED], the Claimant's attended a quarterly psychological review. The established goals were not met and no improvement was found.

On this same date, the Claimant attended a follow-up appointment where it was confirmed he had Hepatitis C viral infection. A liver biopsy was ordered.

On [REDACTED], a Medical Needs form was completed on behalf of the Claimant. The current diagnoses were Hepatitis C, nausea, chronic neck/back pain, depression, anxiety, hypertension, and panic attacks. The Claimant used a cane for ambulation and needed assistance with grooming, dressing, taking medication, meal preparation, shopping, laundry, and housework. The Claimant was found unable to engage in any type of employment.

On [REDACTED], a liver biopsy was performed which revealed chronic viral hepatitis with moderate inflammation and stage 3/6 fibrosis.

On [REDACTED], the Claimant attended a follow-up appointment post liver biopsy. Antiviral therapy was discussed.

On [REDACTED], (and [REDACTED]) blood work confirmed Hepatitis C.

On [REDACTED], the Claimant was evaluated for initiation of antiviral therapy for his Hepatitis C viral infection. The Claimant was prescribed treatment.

On [REDACTED], the Claimant presented to the hospital with bilateral lower back pain/tenderness with decreased range of motion. A psychiatric consult was performed with diagnosed the Claimant with major depression, recurrent and panic disorder with a GAF of 50. X-rays showed some dilated bowel loops. An ultrasound was performed for possible renal carcinoma. CT of the abdomen and pelvis documented bilateral facet arthropathy, relative severe at the L3-L4 level, severe bilateral facet arthropathy at the L4-L5 level, and small broad-

based disc bulge at L5-S1 level. There was no evidence of fracture. The Claimant was discharged on August 9, 2009.

On [REDACTED], the Claimant attended an initial psychiatric evaluation. The Claimant was diagnosed with major depressive disorder, recurrent, severe without psychosis, generalized anxiety disorder, and avoidant personality disorder. The GAF was 40.

On [REDACTED], the Claimant presented to the hospital after a fall. The Claimant was discharged a few hours later with the diagnoses of back pain and contusion.

On [REDACTED], the Claimant was evaluated for a left renal mass. A hand-assisted laparoscopic partial nephrectomy was performed without complication.

On [REDACTED], the Claimant attended a follow-up appointment post paratial nephrectomy secondary to a renal mass. Pathology ([REDACTED]) revealed renal cell carcinoma of the kidney.

On [REDACTED], a psychiatric/psychological evaluation was completed on behalf of the Claimant. The diagnoses were major depression, recurrent, moderate, and generalized anxiety disorder. The GAF was 55 however the Claimant was found markedly limited in 14 of the 20 factors on the Mental Residual Functional Capacity Assessment.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The Claimant was found to be limited in comprehension, memory, sustained concentration, following simple directions, reading/writing, and social interaction.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has

established that the 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, the 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

The Claimant asserts mental disabling impairments due to major depression, anxiety, panic attacks, and agoraphobia. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The severity requirement is measured according to the functional limitations imposed by

the medically determinable mental impairment. 12.00C Functional limitations are assessed in consideration of an individual's activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *Id.*

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders are met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

- h. Hallucinations, delusions, or paranoid thinking; or
- 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

AND

B. Resulting in at least two of the following:

- 1. Marked restriction on activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Listing 12.06 defines anxiety-related disorders whether anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms. The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration.

OR

- C. Resulting in complete inability to function independently outside the area of one's home.

In this case, the Claimant was diagnosed with major depression, anxiety, panic attacks, and agoraphobia. The Claimant's GAF hovers between 40 and 50 with the most recent score of 45. A GAF of 40 translates to some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood while a GAF means serious symptoms OR any serious impairment in social, occupational, or school functioning. The objective evidence documents appetite disturbance with weight loss, decreased energy, feelings of guilt/worthlessness, mood disturbance, difficulty thinking/concentrating, psychomotor agitation or retardation, change in personality, paranoid thinking emotional withdrawal/isolation, illogical thinking, sleep disturbance, etc. Further, the Claimant was found that the Claimant lacked the mental abilities and aptitudes necessary to perform unskilled, semi-skilled, or skilled work. The mental impairment(s) have lasted more than 12 months despite prescribed treatment. Based on the submitted record, the Claimant meets, or is the equivalent thereof, a listed impairment within 12.00 as detailed above. Accordingly, the Claimant's is found disabled at Step 3 with no further analysis required.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. BEM 261 Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. BEM 261

In this case, there is sufficient evidence to support a finding that the Claimant's impairment has disabled him under the SSI disability standards. Accordingly, it is found that the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the January 2009 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in July 2011 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 6/29/2010

Date Mailed: 6/29/2010

NOTICE: Administrative Hearings 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. Administrative hearings 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.

The Claimant may appeal the Decision and Order to the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CMM/jlg

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