

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.: 2010-31116
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 26, 2010
Huron County DHS

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 Bad Axe, Michigan on Wednesday, May 26, 2010. The Claimant appeared and testified along with [REDACTED]. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) 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 benefits on January 4, 2010.

2. On March 22, 2010, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 1, 2)
3. On April 12, 2010, the Department sent an eligibility notice to the Claimant informing him that he was found not disabled.
4. On April 16, 2010, the Department received the Claimant’s Request for Hearing protesting the denial of benefits.
5. On April 26, 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 carpal tunnel syndrome, headaches, and seizures.
7. The Claimant’s alleged mental impairment(s) are due to bipolar disorder.
8. At the time of hearing, the Claimant was 32 years old with an [REDACTED] birth date; was 6’4” in height; and weighed approximately 170 pounds.
9. The Claimant is a high school graduate with a work history as a general laborer mainly working in roofing.
10. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period of 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 carpal tunnel syndrome, headaches, seizures, and bipolar disorder. In support of his claim, some older records from 2008 through May 2009 were submitted which document treatment for mood disorder, alcohol dependence, anemia, acute sinusitis, weight loss, nausea, pneumonia, and back strain.

On [REDACTED], the Claimant presented to the emergency room feeling as if he was going to have a seizure. The Claimant did not have a seizure and alcohol withdrawal symptoms were discussed. The Claimant was discharged in stable condition with the diagnoses of acute light headedness and dizziness.

On [REDACTED], the Claimant returned to the hospital with complaints of abdominal pain and alcohol intoxication. The Claimant experienced hallucinations, nausea, and vomiting. The Claimant was discharged the following day.

On [REDACTED], the Claimant participated in a psychiatric evaluation. The Claimant was found to be experiencing a serious and persistent mental illness, severe emotional disturbance/developmental disability which resulted in marked and persistent disruption in moods/emotions, community/social, work, family, and home. The Claimant was diagnosed with mood disorder and alcohol dependence. The Global Assessment Functioning ("GAF") was 39.

On [REDACTED], the Claimant attended a Psychiatric/Psychological evaluation. The Claimant was found to meet the diagnostic criteria for major depression. The Claimant was

socially isolated with feelings of worthlessness, thoughts of suicide, and little motivation. The Claimant slept for a couple of hours and he was irritable. The Claimant's heavy drinking (18 beers daily) was documented and his ability to relate and interact with others was poor. The Claimant's ability to understand, recall, and complete tasks and expectations was impaired as was his ability to maintain concentration. The Claimant would likely struggle to deal with normal workplace stressors appropriately or adaptively. The diagnoses were major depressive disorder, recurrent, moderate and alcohol dependence. The GAF was 50 and his prognosis was guarded. The Claimant was found unable to manage benefit funds.

On [REDACTED], the Claimant was brought to the hospital after being arrested due to severe alcohol withdrawal. On this date, chest x-rays revealed pneumonia. On [REDACTED], he was referred to inpatient psychiatric treatment due to ongoing hallucinations, suicide ideations, and thoughts of harming others however the Claimant did not go. On [REDACTED], chest x-rays showed the Claimant's pneumonia improvement.

On [REDACTED], the Claimant was referred to the Mental Health Center via petition. The admitting GAF was 25 and the Claimant was placed on assaultive, elopement, cognitive impairment, seizure, fall, and suicide precautions. The Claimant hallucinated and heard voices. On [REDACTED], the Claimant was discharged with the diagnoses of bipolar disorder, mixed type with a history of alcohol dependency. The GAF was 40.

On [REDACTED], the Claimant attended a psychiatric follow-up appointment which resulted in a change in medication. At that time, the Claimant was experiencing agitation and an increase in hallucinations.

On [REDACTED], the Claimant sought treatment for his lack of sleep and hallucinations.

On [REDACTED], a Mental Residual Function Capacity Assessment was completed on behalf of the Claimant. The Claimant was markedly limited in 7 of the 20 factors and moderately limited in 9 more factors. The Claimant displayed difficulty with focus, attention, irritability, angry outbursts, verbal and physical co-worker and peer relationships, acceptance of constructive criticism, and short- and long-term memory.

Progress notes dated [REDACTED] reveal problems with focus, attention, irritability, angry outbursts, verbal and physical co-worker and peer relationships, acceptance of constructive criticism, and short- and long-term memory. Further, the Claimant experienced seizures with an aura, loss of muscle control, hallucinations, and memory loss.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were bipolar disorder, seizures, alcohol abuse, hypertension, schizophrenia, and anemia. The Claimant was physically stable without restrictions but had mental limitations which were not specified.

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 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 disability due to carpal tunnel syndrome, headaches, seizures, and bipolar disorder.

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 is 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.

In this case, the objective findings establish that the Claimant suffers from a major depressive disorder which severely impacts work related activities. The evidence documents hallucinations, severe emotional disturbance/developmental disability with marked and persistent disruption in mood/emotions, community/social, work, family, and home, social isolation, feelings of worthlessness, weight/appetite disturbance, thought of worthlessness, thoughts of suicide, and suicide attempts. The Claimant has had several hospitalizations and treatment; is compliant with his medication; and currently residing in Adult Foster Care. The GAF ranged between 39 and 50 with the most recent being 40. Ultimately, it is found that the Claimant's mental impairment(s) meets, or is the equivalent thereof, a listed impairment within 12.00, specifically, 12.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the January 4, 2010 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination.
3. The Department shall supplement for any lost benefits that 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: 6/16/2010

Date Mailed: 6/16/2010

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

cc:

