

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-30200
Issue No.: 2009/4031
Case No.: [REDACTED]
Hearing Date: August 10, 2011
Monroe 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 Monroe, Michigan on Wednesday, August 10, 2011. The Claimant appeared, along with [REDACTED] and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

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 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. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on March 21, 2011.
2. On April 6, 2011, the Medical Review Team ("MRT") found the Claimant disabled for purposes of the SDA program and not disabled for purposes of the MA-P program. (Exhibit 1, pp. 2, 3)
3. On April 11, 2011, the Department notified the Claimant of the MRT determination.

4. On April 19, 2011, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On May 6, 2011, the State Hearing Review Team ("S HRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to stage IV liver disease, abdominal pain, high blood pressure, hypothyroidism, leg pain with swelling, and pancreatitis.
7. The Claimant alleged mental disabling impairments due to bipolar disorder.
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5'11" in height; and weighed 211 pounds.
9. The Claimant is a high school graduate with an employment history as a truck driver and supervisor.
10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance 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, 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 Tables ("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 (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 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 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 and, therefore, is not ineligible for disability benefits 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 disability due to stage IV liver disease, abdominal pain, high blood pressure, hypothyroidism, leg pain with swelling, pancreatitis, and bipolar disorder. In support of his claim, some older records from ██████████ were submitted which document diagnoses/treatment for chest pain, cardiac catheterization, hypertension, pancreatitis, acidosis, esophageal reflux, hyperlipidemia, irritable bowel syndrome, hypocalcemia, anemia, thrombocytopenia, chest pain, alcohol dependence, and anxiety.

On ██████████ the Claimant presented to the hospital with a panic attack. The final diagnosis was abdominal pain.

On ██████████ the Claimant was admitted to the hospital with atypical chest pain and near syncopal episode. The Claimant was discharged on April 17th with the diagnoses of syncope/collapse, chest pain, diarrhea, alcohol abuse, hypothyroidism, essential hypertension, esophageal reflux, anxiety, depressive disorder, and visual disturbance.

On ██████████, the Claimant was treated for/diagnosed with recurrent abdominal pain and atypical chest pain.

On [REDACTED] the Claimant presented to the hospital with a long history of alcohol use and hypertension complaining of abdominal pain. The Claimant was discharged on [REDACTED] with the diagnoses of alcohol use, hyperlipidemia, depression, anxiety disorder, and bipolar disorder.

On [REDACTED] the Claimant presented to the emergency room with complaints of abdominal pain, nausea, and vomiting. On admission, the Claimant had an alcohol level of 159 as well as elevation in his bilirubin. The Claimant was treated and discharged on [REDACTED] with the diagnoses of alcohol dependency, bipolar disorder, elevated cholesterol, and hypothyroidism.

On [REDACTED] the Claimant was admitted to the hospital with jaundice and edema of the lower legs, abdominal pain, nausea, vomiting, and leg cramps. Liver functioning tests were very abnormal. The liver biopsy showed acute alcoholic hepatitis superimposed upon chronic steatohepatitis with bridging fibrosis. The Claimant was discharged on [REDACTED] with the diagnoses of acute alcoholic hepatitis, essential hypertension, hyperlipidemia, irritable bowel syndrome, anxiety, morbid obesity, hypothyroidism esophageal reflux, meralgia paraesthesia, and depressive disorder.

On [REDACTED] the Claimant presented to the emergency room with complaints of severe abdominal pain. The blood alcohol was 171. The Claimant was treated and discharged on [REDACTED] with the diagnoses of multifactorial abdominal pain, alcohol dependence, and hepatitis.

On [REDACTED] the Claimant presented to the hospital with complaints of abdominal pain and vomiting blood. The Claimant was discharged on [REDACTED] with the diagnoses of abdominal pain, alcoholic cirrhosis of liver, chronic pain, dysthymic disorder, irritable bowel syndrome, essential hypertension, pure hypercholesterolemia, hypothyroidism, diabetes mellitus, esophageal reflux, obesity, and anemia.

On or about [REDACTED] the Claimant presented to the hospital with complaints of leg swelling. The Claimant was treated and discharged with the diagnosis of peripheral edema.

On [REDACTED] the Claimant was admitted to the hospital with complaints of abdominal pain and swollen legs. The Claimant was discharged on [REDACTED] with the principal diagnosis of cellulitis over both lower extremities secondary to anasarca, alcoholic cirrhosis, hypertension, hypothyroidism, dyslipidemia, and bipolar disorder.

On [REDACTED] the Claimant was treated for abdominal pain of undetermined etiology.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypothyroidism, cirrhosis, liver disease, ascites, and bipolar disorder. The Claimant's condition was deteriorating.

Listing 5.00 defines digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A. Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B. The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1. Chronic liver disease is characterized by liver cell necrosis, inflammation, or scarring (fibrosis or cirrhosis) due to any cause, that persists for more than 6 months. 5.00D1. Alcoholic liver disease is an example of chronic liver disease. 5.00D2. Symptoms and signs of chronic liver disease include, fatigue, nausea, loss of appetite, sleep disturbance, jaundice, ascites, peripheral edema, and altered mental state. 5.00D3(a)(b).

Listing 5.05 discusses chronic liver disease. To meet this listing, ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, must be present on at least 2 evaluations at least 60 days apart within a consecutive 6-month period and be documented (in part) by appropriate medically acceptable imaging or physical examination showing (among other things) serum albumin of 3.0 g/dL or less.

In this case, the Claimant has been hospitalized at least 6 times over the course of a year for treatment for abdominal pain and liver disease. The records document fibrosis, cirrhosis, fatigue, nausea, loss of appetite, jaundice, ascites, and peripheral edema. The Claimant's albumin in [REDACTED] and [REDACTED] was less than 3.00 g/dL. Ultimately, it is found that the Claimant's impairment(s) meets, or is the medical equivalent thereof, a listed impairment within 5.00, specifically 5.05. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. 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. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In some circumstances benefit payments can, or must, be restricted to someone other than the individual (program group). BAM 420. A protective payee is a person/agency selected to be responsible for receiving and managing the cash assistance on behalf of the individual (program group) as a third party. *Id.* Restricted payments are required in any of the following circumstances:

- Court-ordered shelter arrearage collection
- Third-party resource disqualification
- Minor parent
- Substance Abuse
- Client convicted of a drug-related felony
- Money mismanagement
- A child(ren) receiving FIP has a legal guardian
- Eviction or threatened eviction

Id.

Restricted payment status is reviewed when appropriate but at least at every determination. *Id.* The client has the right to request and be granted a review of the restricted payment status every six months. *Id.* An individual (group) may request a hearing to dispute a decision to begin or continue restricted payments or dispute the selection of a protected payee. *Id.* Restricted payments are continued until the hearing matter is resolved. *Id.*

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the March 21, 2011 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, in light of the Claimant's history of alcohol abuse/dependency, evaluate the need for a protective payee in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review the Claimant's continued eligibility in September 2012 in accordance with Department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 25, 2011

Date Mailed: August 25, 2011

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 Circuit Court within 30 days of the mailing 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.

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