


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

IN THE MATTER OF:



Reg. No: 2011-30202
Issue No: 2009/4031
Case No: 
Hearing Date:
July 26, 2011
Monroe County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received on April 15, 2011. After due notice, a telephone hearing was held on July 26, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On February 11, 2011, Claimant applied for MA-P, Retro-MA and SDA.
- (2) On April 5, 2011, the Medical Review Team (MRT) denied Claimant's MA application stating Claimant is capable of performing other work, pursuant to 20 CFR 416.920(f). MRT denied Claimant SDA finding the impairment did not prevent employment for 90 days or more. (Department Exhibit A, pages 7-8).
- (3) On April 22, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On April 15, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On May 12, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P, Retro-MA and SDA benefits stating Claimant retains the residual functional capacity to perform a wide range of unskilled work. (Department Exhibit B, page 1).
- (6) On July 26, 2011, Claimant waived the requisite time constraints during the hearing in order to allow the department to obtain additional medical records from his July emergency department visit.
- (7) On August 26, 2011, Claimant's medical records were received and forwarded to SHRT for review.
- (8) On October 26, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P, Retro-MA and SDA benefits stating Claimant retains the residual functional capacity to perform a wide range of unskilled work. (Department Exhibit C, pages 1-2).
- (9) Claimant has a history of bipolar disorder, depression, a learning disability and a tumor on his spine.
- (10) On February 9, 2010, Claimant was evaluated by a psychiatrist for the department. Claimant has a long history of mental health and substance abuse problems. His bipolar disorder was not being managed by Seroquel. He had been on the medication for a year. Diagnoses: Axis I: Bipolar Disorder, NOS, Alcohol Abuse in remission, Marijuana abuse in remission; Axis V: 55/60. (Department Exhibit A, pages 24-26).
- (11) On February 15, 2010, Claimant was referred by his probation officer for a psychiatric assessment. Claimant was released from prison on December 1, 2009. He was in prison for 3 years and 4 months for threatening to kill his ex-wife. He stated he did relatively well in the prison system without any medications. He was having severe mood swings and difficulty in concentration, poor frustration tolerance and also problems getting to sleep. He also gave a history of anxiety attacks. No previous psychiatric hospitalizations or medications. He never had any suicidal ideations or plans. He maintained good eye contact all through the interview process. His mood was slightly anxious. Affect congruent with mood. His speech was slightly rapid with occasional flight of ideas noted. He feels like people are talking about him all the time. Diagnosis: Axis I: Bipolar Disorder, NOS, and History of Polysubstance Abuse; Axis V: 60. Claimant was prescribed Risperdal. (Department Exhibit A, pages 27-29).
- (12) On March 10, 2010, Claimant reported to the emergency room complaining of chest pain. Claimant's ECG was borderline showing a possible left atrial enlargement with normal sinus rhythm. Claimant's chest x-ray showed the heart was normal size. Lungs were clear. No

pneumothorax and no pleural effusion. No acute process. He was prescribed Toradol and Anaprox for pain and instructed to follow-up with the medical center within the next three days. (Department Exhibit A, pages 78-79, 87, 91).

- (13) On November 5, 2010, Claimant saw his doctor complaining of lower back pain. He was taking Seroquel and Depakote and reportedly doing well. For the past 6 months he complained of an occasional stabbing discomfort in his mid back. No associated trauma or injury, no history of kidney stones, no urinary bowel or lower extremity complaints. Pain at its worst is a 9/10, is not constant. Appears to be worsened with cold air, excessive sitting, and with physical activity as the day progresses. Symptoms are improved with lying flat and first thing when he awakens. He was prescribed Zanaflex and Motrin. (Department Exhibit A, page 61).
- (14) On November 9, 2010, Claimant was evaluated by a psychologist for the Michigan Disability Determination Service. Claimant was seeing a therapist every two weeks, in addition to his psychiatrist. Claimant was taking Depakote and Seroquel at the time of the evaluation. He was also an out-patient for substance abuse treatment and had been in and out of substance abuse treatment since the age of 13. The longest job Claimant had ever held was for two months in 2005. He has low self-esteem. He did not exaggerate or minimize his symptoms but lacks insight. He does not like working around other people. He thinks people are talking about him. When he tries to work, he believes people are talking about him and he gets anxious and leaves during lunch break. He has poor concentration and has difficulty maintaining attention. He has racing thoughts and is easily distracted. He has always had the feeling that someone is going to kill him or is plotting against him since he was a little kid. He has had suicidal thoughts a few times. When he was four, he tried to cut his wrist. He tried lying on railroad tracks in 1991. In 2005, he called people he knew and said that he was going to commit suicide after a friend had hung himself three days earlier. He generally feels sad. He does not like being around people and has always preferred to be alone. Affect was flat. He may be functioning in the borderline range of intellectual functioning. Memory reflects some impairment. There is suggestion of ADHD in childhood some symptoms of which remain such as losing things and attention difficulties. Diagnoses: Axis I: Social Phobia, Alcohol Dependence, Mood Disorder, NOS, History of Polysubstance Abuse; Axis II: Avoidant Personality Disorder, Borderline Personality Disorder; Axis V: 45. Prognosis: Fair. Therapy is important to his success. (Department Exhibit B, pages 3-6).
- (15) On January 21, 2011, Claimant saw his doctor complaining of back pain. His symptoms were reviewed and he admits that everything is the same

except his pain is now constant. He questions if his Seroquel is contributing to his pain. It is not helping his mood, it only helps him sleep. He will be seeing his psychiatrist next week. There is pain palpated over the spine centrally in the T10 region. An x-ray and MRI were ordered. The x-ray of Claimant's thoracic spine demonstrated vertebral height, alignment and interspacing were within normal limits. An over-penetrated view of the cervicothoracic junction demonstrates no obvious evidence of fracture or subluxation. No paraspinal masses were identified. Normal examination. (Department Exhibit A, page 84).

- (16) On January 31, 2011, Claimant's MRI showed a small cyst within the left neural foramen at the T10-T11 level. This suggests a nerve root sheath cyst. This measures 12.3 x 9.7mm. No evidence of any compression fracture or significant degenerative process. Disc spaces are preserved and the thoracic cord is normal in course, caliber and signal intensity. No canal stenosis. No paraspinal abnormality. Recommended follow-up to exclude the slight possibility of a nerve sheath tumor. (Department Exhibit A, page 85).
- (17) On February 14, 2011, Claimant had a follow-up MRI after an abnormal MRI showing a nerve root sheath cyst which was compared to the MRI from January 31, 2011. Note again is made of a 1.3 x 0.8 x 1.9 cm hyperintense T2, hypointense T1 signal in the left T10-T11 neural foramen without evidence of any significant enhancement on the postcontract images, likely representing a perineural cyst. The examination is otherwise stable and unremarkable. No significant disc pathology, central canal or other evidence of neuroforaminal narrowing. (Department Exhibit A, page 86).
- (18) On March 18, 2011, Claimant was seen by a neurologist for back pain. Claimant's primary physician performed a workup which included an MRI of his cervical, thoracic and lumbar spine that showed a cyst of the T10-T11 area for which he was referred. He states that he started noticing non-radiating back pain last year that has become progressively worse. The pain is exacerbated if he is sitting for greater than 15 minutes or if he is walking. He receives some alleviation from lying down flat. He felt Tylenol 3 alleviated some of his symptoms. He presented to the clinic with an MRI of his thoracic spine with and without contrast, which is notable for a hyperintense lesion on T2 at the left T10-T11 neural foramen without evidence of any significant enhancement on the post contrast images. Due to the presence of the lesion as well as his pain, he was offered neurosurgical intervention by way of T10-T11 laminectomy and facetectomy and removal of lesion. He could not be scheduled for surgery until he obtained full Medicaid to allow for inpatient surgery. (Department Exhibit A, pages 32-33).

- (19) On March 17, 2011, Claimant saw his counselor who noted he responds well to medication. He has had a decrease in mania, anxiety and depression and has not self medicated. (Department Exhibit A, page 132).
- (20) On May 5, 2011, Claimant saw his counselor. He is off parole on June 1. He needs back surgery and is unable to work. He is every anxious, however Seroquel is working well. (Department Exhibit A, page 135).
- (21) On May 20, 2011, Claimant saw his doctor complaining of back pain. He had his evaluation by the neurosurgeon who indicated he would benefit from surgery. Pain is stable on Tylenol 3. Prescribed a refill of Tylenol 3 and instructed to proceed with surgery once Medicaid was obtained. (Department Exhibit A, page 58).
- (22) On May 26, 2011, Claimant saw his counselor. Reviewed past year. Bipolar disorder in remission with prescription. Alcohol abuse in remission. Reinforced progress. Last MPRI visit. Discussed relapse prevention and managing Bipolar disorder. (Department Exhibit A, page 137).
- (23) On June 16, 2011, Claimant's chest x-ray showed the heart, mediastinum and pulmonary vascularity appeared stable. The lungs and pleural spaces were clear. No evidence of pneumothorax or free air beneath the hemidiaphragms. No acute process in the chest. (Department Exhibit A, page 88).
- (24) On June 26, 2011, Claimant went to the emergency room complaining of chest pain. Claimant was oriented to person, place and time and anxious. Claimant's chest x-ray showed stable cardiomedial countour, no focal consolidation or pleural effusion. No acute intrathoracic process. Claimant's ECG was normal. (Department Exhibit A, pages 76-77, 89-90).
- (25) On July 12, 2011, Claimant saw his doctor for a medication review. He felt like was going to feint or was light headed. He tried to cut back on the Seroquel but then he could not sleep. He complained of heart burn. His mood was stable. Reported hallucinations a month ago when he thought he heard someone talking to him but no one was there. Speech was poor, sleep and appetite good, energy level not good. There are times when he feels his heart rate pounds. (Department Exhibit A, page 117).
- (26) On July 15, 2011, Claimant saw his doctor for follow-up. He is scheduled for an echocardiogram tomorrow. He has had several episodes of chest pain. Currently on Seroquel from mental health and Tylenol 3 for back pain. (Department Exhibit A, page 56).

- (27) On July 16, 2011, Claimant was admitted to the hospital for palpitations. Claimant's echocardiogram showed his heart was normal and the Doppler study showed mild tricuspid regurgitation. (Department Exhibit A, pages 73, 93-94).
- (28) Claimant is a 30 year old man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 175 lbs. Claimant completed the eighth grade and obtained his GED in 2007. Claimant last worked in a factory in 2005.
- (29) Claimant had applied for Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program 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 Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from

employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he has not worked since August, 2005. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with a hyperintense lesion on T2 and a perineural cyst at the left T10-T11 neural foramen. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter Claimant had back problems which would affect his ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

At Step 3 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. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth 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 past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings that Claimant cannot return to his past relevant work because the rigors of working as a factory worker are completely outside the scope of his physical abilities given the current medical evidence presented.

In the fifth 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 the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you 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 the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and 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). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which

the Claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his February 11, 2011 MA/retro-MA and SDA 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 and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's February 11, 2011 MA/retro-MA and SDA 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 November 2012, 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.

/S/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/21/11

Date Mailed: 11/21/11

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.

VLA/ds

■ [REDACTED]