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

IN THE MATTER OF:

[redacted]

Reg. No: 2011-37074
Issue No: 2009
Case No: [redacted]
Hearing Date:
October 4, 2011
Jackson 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 February 8, 2011. After due notice, an in-person hearing was held on October 4, 2011. Claimant and Claimant's representative, [redacted], personally appeared and testified.

ISSUE

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

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 September 24, 2010, Claimant applied for MA-P and Retro-MA.

(2) On November 24, 2010, 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). (Department Exhibit A, pages 36-37).

(3) On November 24, 2010, the department caseworker sent Claimant notice that his application was denied.

(4) On February 18, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On June 30, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits stating Claimant's impairment lacks 12-month duration. (Department Exhibit B, pages 1-2).

(6) On October 6, 2011, Claimant's medical documentation was forwarded to SHRT.

(7) On December 2, 2011, SHRT upheld the denial of MA-P and Retro-MA benefits stating Claimant retains the capacity to perform medium work. (Department Exhibit C, page 1).

(8) Claimant has a history of bipolar disorder, cervical disc degeneration, and a torn muscle in his right shoulder.

(9) On October 19, 2009, Claimant saw his doctor complaining of mood issues. His chronic conditions were listed as cervical disc degeneration and adjustment disorder with anxiety/depressed. He wanted a medication refill, then mentioned that the medication makes him tired. He asked about seeing a psychiatrist. He appeared angry. It was hard to communicate with him because he went from one topic to another. He was scheduled for an appointment the following day. (Department Exhibit A, pages 15-16).

(10) On January 25, 2010, Claimant saw his doctor for depression. Claimant felt he needed his Effexor increased. He was in no apparent distress. Declined counseling. (Department Exhibit A, pages 17-18).

(11) On February 22, 2010, Claimant saw his family doctor for a medication check. He was experiencing depressed mood, poor concentration and indecisiveness. He felt the medications were affecting his memory. He was unable to remember things in class and the increase had not helped his mood. He thought he may have ADD or bipolar. The exam showed he was positive for anhedonia, but not anxious. He was forgetful, and experiencing memory loss but had no suicidal ideation. A psychological referral was made. (Department Exhibit A, pages 19-20).

(12) On May 13, 2010, Claimant saw his family doctor for medications prescribed by his psychiatrist. Depakote and Wellbutrin XL were prescribed and labs were ordered. (Department Exhibit A, pages 21-22).

(13) On August 19, 2010, Claimant saw his doctor for refills of Effexor and Wellbutrin. He was short of breath, but his respiratory exam showed his lungs were clear. His musculoskeletal exam was positive for back pain. He was in no acute distress, but had a mild tremor and was encouraged to go to emergency room to see about a detox program. (Department Exhibit A, pages 23-26).

(14) On August 31, 2010, Claimant presented to the emergency room with a history of alcohol use and a motor vehicle accident. He had an injury to his right side. His chest injuries were significant. He was admitted. He had a chest tube placed in the emergency room to treat the pneumothorax on the right and rib fractures. He was placed on the CIWA pathway to prevent delirium and manage his chest tube. Once the air leak had stopped, the chest tube was removed. He was anxious to be discharged. On September 3, 2010, Claimant was discharged from the hospital. He was discharged home with Vicodin for pain. He received ample counseling to stop drinking and smoking. Follow-up arrangements were made for Claimant to return to the hospital the following week. (Department Exhibit A, page 28).

(15) On November 29, 2010, Claimant underwent an examination for the department. Based on his physical examination, the doctor found Claimant's condition was stable and his needs could be met at home. (Claimant Exhibit A, pages 1-2).

(16) On June 30, 2011, Claimant underwent a physical examination for the department. The doctor noted Claimant had limited range of motion in his right shoulder and had a diagnosis of cervical disc degeneration. He was found stable and his needs could be met at home. (Department Exhibit A, pages 3-4).

(17) Claimant is a 52 year old man whose birthday is [redacted]. Claimant is 5'9" tall and weighs 150 lbs. Claimant completed his GED and is a fork lift operator by trade. Claimant last worked in 2004.

(18) Claimant was appealing the denial of 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

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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). Statements about pain or other symptoms do not alone establish disability. 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. 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).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). 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 limitations are 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. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are 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 and individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

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). 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 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).

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.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he has not worked since 2004. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, the claimant's symptoms are evaluated to see there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the 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.
In the present case, the claimant alleges disability due bipolar disorder, a torn muscle in his right shoulder and cervical disc degeneration.

According to the medical records submitted, Claimant saw his family doctor for medication checks and refills for his depression five times from October 2009 through August 2010. The first visit in October 2009, he appeared angry. At the second visit in January 2010, he was in no apparent distress. During his third visit in February 2010, he was forgetful, unable to concentrate and felt the medication was affecting his memory. His doctor found he was positive for anhedonia, but was not anxious. At the fourth visit in May 2010, he was prescribed new medications and labs were ordered. During his last visit in August 2010, he was in acute distress, but had a mild tremor and his doctor encourage him to go the emergency room to check on a detox program.

Claimant was admitted to the hospital on August 31, 2010 for chest injuries related to alcohol use and a motor vehicle accident. A chest tube was placed while he was in the emergency room to treat the pneumothorax on his right side and rib fractures. Once the air leak was stopped, the chest tube was removed and he was anxious to be discharged. Claimant was discharged in stable condition on September 3, 2010, with a prescription for Vicodin.

There is no objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment that has lasted or is expected to last at least 12 months, consecutively. While Claimant does appear to suffer from depression, he has been prescribed antidepressants and there is no evidence that his depression is not being managed by the prescriptions. In addition, although Clamant was admitted for four days in August 2010 for a pneumothorax, the pneumothorax was resolved and he was discharged with a prescription for Vicodin. Therefore, Claimant is denied at step 2 for lack of a non-severe impairment and no further analysis is required.

Claimant has not presented the required competent, material and substantial evidence which would support a finding that the claimant has a severe impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for 12 months in a row. 20 CFR 416.920(c); 20 CFR 404.1521. Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. Therefore, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance and Retroactive Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriate established on the record that it was acting in compliance with department policy when it denied Claimant's application for Medical Assistance and Retroactive Medical Assistance benefits. Claimant was not prevented from all types of work continuously for 12 months. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

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

Date Signed: 12/20/11

Date Mailed: 12/20/11

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