

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

IN THE MATTER OF:



Reg. No.: 2012-33947
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: April 26, 2012
County: Gratiot

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. After due notice, a telephone hearing was held on April 26, 2012. Claimant personally appeared and testified.

ISSUE

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

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 December 2, 2011, Claimant filed an application for MA and SDA benefits alleging disability.
- (2) On February 6, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and SDA indicating that Claimant's non-exertional impairment will not prevent Claimant from performing other work.
- (3) On February 13, 2012, the department sent notice to Claimant that his application for Medicaid and SDA had been denied.
- (4) On February 15, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On March 16, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits indicating Claimant retains the capacity to perform a wide range of simple, unskilled work. (Department Exhibit B, pages 1-2).
- (6) Claimant has a history of a hypertension, seizures, mood disorder, adjustment disorder, borderline personality disorder, acid reflux, asthma, hyperlipidemia, hyperthyroidism, and substance abuse.
- (7) On September 28, 2011, Claimant underwent a mental health evaluation admission referral. The examining psychiatrist found that Claimant was reaching his max out date on December 2, 2011, and Claimant has a mental health disorder that will prevent him from making the proper decisions when released. Claimant is in need of Community (release from prison), reintegration preparation and planning, for without he may turn back to crime and be returned back to prison. Claimant lacks receptive and expressive language, self-direction, and has economic self-sufficiency problems. He also has low frustration tolerance, impulsivity, and aggressive behavior that could occur as a result of limited communication skills, mis-interpretation of social cues, sense of being threatened, and a flawed concrete logic. He still has problems developing adaptive skills needed to adequately function in one's daily life, such as health, both physically and mentally, lacks self-control, self-direction, and social skills. He was referred for psychological testing given his volatility and lack of positive response to myriad medications. Claimant has a severe Borderline Personality. Claimant can abruptly shift from pervasive depressed mood to anxious agitation or intense anger. He frequently displays impulsive behavior. Claimant has expressed many times that he has no one and no place to go and is not going to be left on the streets with no place to live and has made threats of self harm or harm to others to be returned back to prison. He has already "hinted" that he may need to be charged with another crime. Claimant is prone to be a repeat offender with no support services available to him. He has no home. Financial arrangements are very poor; he had no clothing, and no way of meeting his daily needs, i.e., food, necessities. Axis V: GAF=51 (Department Exhibit A, pp 74-80).
- (8) On November 9, 2011, Claimant was transferred to a new prison and attended a Mental Health in-take interview. Claimant was anxious and reported he was frustrated with his max out. He expressed concerns regarding community placement, clothing, money, transportation, and mental health services. He reported he has no family support. He stated, "they are the ones that put me here. They stole over 200,000 dollars from me while I was in here. I didn't do what I am in here for. I am going to seek revenge. That is the only way I will feel better. I want them to spend the rest of their lives in prison." Claimant discussed history of suicide

attempts. He stated, "when I was here before they took me out twice to the hospital and I was dead. I gutted myself and cut myself 19 times." When asked if he currently had any thoughts of harming himself he stated, "no, I don't have time for those thoughts, I am thinking of more devious things like seeking revenge on my family." When reminded of the potential consequences, he stated, "I will take them to the battle fields of South Dakota or the Reserve." Claimant was encouraged to identify other ways to cope with his feelings of betrayal and resentment regarding his family. He then stated, "there is no other way to deal with it until I get my revenge, that is the only way." Claimant was able to be refocused and his intake session was completed. Claimant's mood was anxious and irritable. Claimant's reasoning, impulse control, judgment, and insight were poor. (Department Exhibit A, pp 62-66).

- (9) On November 21, 2011, Claimant was seen at the bureau of health care services while incarcerated for a medication review. Claimant presented calmer than before and was able to attend to conversation, although his speech was still pressured and his mood showed some improvement. Claimant is due to max out in 9 days and he had many questions regarding his discharge. Claimant had a body odor and reported that he has had some stomach upset. He denied any suicidal or homicidal ideations, hallucinations, or psychotic features. Claimant agreed to an increase in Tegretol for continued mood stabilization. His mood was anxious and irritable. Reasoning and impulse control were fair. His judgment was poor. Clinical Assessment: Axis I: Adjustment Disorder with Disturbance of Emotions and Conduct, Polysubstance Dependence; Axis II: Borderline Personality Disorder, Antisocial Disorder. (Department Exhibit A, pp 58-61).
- (10) On November 18, 2011, a Writ of Habeas Corpus and Petition/Application for Hospitalization naming Claimant was filed and signed by the court, for a scheduled court date of November 23, 2011. The petition alleged that Claimant's individual judgment is so impaired that he is unable to understand his need for treatment. Continued behavior as the result of his mental illness can be reasonably expected, on the basis of competent clinical opinion to result in significant physical harm to self or others. This conclusion was based on Claimant's report that he is completing his prison sentence on 12/2/11. He reported that his last suicide attempt was in 2007 when he cut his wrist, swallowed battery acid and swallowed razors. He discussed a history of having been "stoned out of his gourd," on methamphetamines at the time of his first offense, going the "whole nine yards" slicing and overdosing when his grandmother died, and having threatened to "blow" his father's head off in the past if he didn't leave the property as was requested. Claimant acknowledged that he stopped taking his seizure medication in May, 2011, because his goal was to have a seizure and die. He now denies having thoughts about wanting to die.

However, Claimant discussed a pattern of stopping his medications after he becomes stabilized. He stated, "I take myself off and go straight downhill." He stated that he believes that his medications are helping "to an extent." Claimant is mentally ill, with a diagnosed mood disorder, and has a convulsive disorder and a seizure disorder secondary to traumatic brain injury at the age of 8 following a vehicular suicide attempt. A combined order with initial involuntary outpatient treatment was requested. (Department Exhibit A, pp 45-53).

- (11) On November 23, 2011, the Initial Order Following Hearing on Petition for Admission indicated the court found Claimant is a person requiring treatment because he has a mental illness, and as a result of that mental illness, he can be reasonably expected within the near future to intentionally or unintentionally seriously physically injure self or others and has engaged in an act or acts or made significant threats that are substantially supported of the expectation and his judgment is so impaired he is unable to understand the need for treatment. Continued behavior as the result of his mental illness can be reasonably expected, on the basis of competent clinical opinion, to result in significant physical harm to self or others. There is not an available treatment program that is an alternative to hospitalization or that follows an initial period of hospitalization adequate to meet Claimant's treatment needs and is sufficient to prevent harm that he may inflict upon self or others within the near future. It was ordered that Claimant undergo combined hospitalization and alternative treatment for a period not to exceed 90 days. Alternative treatment shall be under the supervision of a CMH services program. If Claimant refuses to comply with a psychiatrist's order to return to the hospital, a peace officer shall take him into protective custody and transport him to the hospital designated by the psychiatrist. (Department Exhibit A, pp 53-55).
- (12) On December 12, 2011, Claimant underwent an initial assessment at Community Mental Health (CMH). Claimant reported that he becomes suicidal when he is off his medications. He has tended to stop taking his meds when he feels like he is better. According to prison reports, Claimant has reported 43 suicide attempts. His first was when he was 8 years old. He took his mother's car and "played chicken" with a semi. He drove it head on into the semi and was in a coma for 30 days. Claimant reported that he has had seizures ever since. Claimant reported that in 2004, he "cut himself, overdosed, and swallowed battery acid." Also, in 2007, he stated that a prison guard told him to "kill yourself" and Claimant took a razor and "cut open his stomach and pulled his guts out" in front of the guard. Claimant's last suicide attempt that he reported was in May, 2011, when he "tried to slice his throat" with a razor in prison. According to prison records, other suicide attempts that Claimant reported were in 2004 when he cut himself 9 times and took 8000 pills; July 8, 2007, wrapped contents of 4 Duracell D batteries in toilet paper and swallowed it; July 11,

2007, sulfuric acid ingestion; and January 14, 2008, swallowed an open battery, needles, razors, and broken glass all at once. Claimant reported cutting himself from ages 11-34. He stopped in 2007, after a suicide attempt of "drinking battery acid." Claimant reported that he becomes very angry easily and will attack others. Claimant started using methamphetamine intravenously at age 13. He reported he used about an 8-ball of meth every other day until he entered prison. Claimant has maxed out of his 17 year prison sentence. He has no parole agent, only a court order for mental health services. Claimant has marked problems recognizing and expressing emotions appropriately and in his ability to develop and maintain relationships. He has moderate difficulty problem solving with other people. Claimant's diagnosis from intake is Bipolar Disorder. According to prison documentation, Claimant was also diagnosed with Adjustment Disorder, Polysubstance Dependency, Borderline Personality Disorder and Antisocial Personality Disorder. Claimant reported that he becomes very suicidal and aggressive if he does not stay on his medication. Claimant has a court order for treatment through CMH. Axis V: GAF=60. (Department Exhibit A, pp 17-34).

- (13) On December 21, 2011, Claimant underwent a psychiatric evaluation. Claimant had a long history of mood swings which are characterized by impulsive behavior, aggressive outbursts, and difficulty controlling his temper. He has poor tolerance for frustration. He is currently living with his mother. He is currently on Tegretol for seizure activity. Claimant was prescribed Abilify, and his prescriptions for Clonidine and Doxepin were renewed. Axis I: Bipolar Disorder, Polysubstance Dependence in sustained remission; Axis II: Mixed Personality Disorder with Borderline and Antisocial Traits; Axis V: Current GAF=45. (Department Exhibit A, pp 35-37).
- (14) Claimant is a 38 year old man whose birthday is [REDACTED]. Claimant is 5'10" tall and weighs 221 lbs. Claimant completed a high school equivalency degree.
- (15) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, et seq., and Mich Admin Code, Rules 400.3151-400.3180. 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 SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in

the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

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 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 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 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 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).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed

impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #6-#13 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, that his mental impairments meet or equal Listing 12.04(C):

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

C. Medically documented history of a 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 a 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.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his December 2, 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 December 2, 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 May 2014, 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: 5/7/12

Date Mailed: 5/7/12

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]