

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

IN THE MATTER OF:



Reg. No.: 2012-39419
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 17, 2012
County: Berrien

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 May 17, 2012. Claimant, represented by his [REDACTED] case worker, 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 (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 January 24, 2012, Claimant filed an application for MA and SDA benefits alleging disability.
- (2) On March 1, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating Claimant was capable of performing other work. SDA was denied due to lack of duration.
- (3) On March 6, 2012, the department sent notice to Claimant that his application for Medicaid and SDA had been denied.
- (4) On March 8, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 18, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits indicating Claimant retains the capacity to perform simple and repetitive tasks. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of arthralgias, attention deficit disorder (ADD), dementia, attention deficit hyperactive disorder (ADHD), depression, and learning disability.
- (7) On February 13, and February 14, of 2009, Claimant underwent a two-day assessment at the university center for reading and learning. Claimant went to the center for testing as recommended by the [REDACTED] [REDACTED] to ascertain his strengths and weaknesses. His background was positive for severe academic challenges. Test results indicated Claimant was functioning in the Borderline range of cognitive ability. An area of strength was noted in Auditory processing, particularly when background noise was present. Weaknesses were apparent in reasoning skills, in all memory tasks such as: auditory working memory, short-term and working memory; processing speed of information and comprehension of knowledge were also deficient. He demonstrated significant weaknesses in long-term memory retrieval and verbal areas. Achievement testing reveals below grade level scores in all areas. Reading, math and writing were at about the third grade level and spelling was at the second grade level, making academic tasks almost impossible to accomplish which explained his dropping out of school in ninth grade. Although he did not seem to have any significant emotional challenges, he was very distressed about his “trouble remembering things,” “trouble concentrating,” trouble falling asleep,” “having to check and double check” what he does, and “feeling blocked in getting things done.” If these feelings become too overwhelming, he will need to seek professional help. A thorough medical evaluation was recommended. Claimant should be assessed for possible physical conditions that may contribute to his hyperactive and distractible behaviors. Hearing and vision should be a part of this medical examination. (Department Exhibit A, pp 127-140).
- (8) On November 15, 2010, Claimant saw his primary physician to follow-up on his diagnosis of ADD. Claimant had been complaining of his inability to learn or comprehend, and his racing thoughts. He had difficulty sleeping at night. He had trouble falling asleep. He wanted to get tested and received a full workup at the university where they diagnosed him with possible dyslexia, ADD, ADHD, and Dementia. He said that he has had some jobs recently but he gets fired for doing things wrong. He cannot remember instructions and does the jobs wrong. He is seeing a case worker through the state that is helping him find jobs. (Department Exhibit A, p 108).

- (9) On August 12, 2011, Claimant saw his primary physician for persistent insomnia. The primary symptoms included dysphoric mood. The current episode started over a month ago and is a chronic problem. Additional symptoms of the illness include anhedonia, insomnia, and fatigue. He exhibited a depressed mood. (Department Exhibit A, pp 16-17).
- (10) On October 27, 2011, Claimant sought services at the mental health center for depressive symptoms. Claimant stated his doctor referred him to a therapist who suggested he go to the mental health center for services. Claimant reported chronic pain (lower back pain, all over body aches) which he believed were caused from his previous work experience. He reported that he had struggled with learning disabilities, staying focused and concentrating, and understanding complex concepts throughout his life. This often led him to become frustrated and overwhelmed. While he had been able to hold a job, he often needed help or special accommodations to maintain employment. Claimant denied a history of mental health services, hospitalization, or suicide attempts. He presented with symptoms consistent for severe depression with psychotic features. He was diagnosed by AU Testing for learning disability and ADHD. He was homeless. Claimant was scheduled for a psychiatric evaluation. (Department Exhibit A, p 70).
- (11) On December 21, 2011, Claimant underwent a psychiatric evaluation at the mental health center. Diagnosis: Axis I: Depressive Disorder; Axis II: Learning Disorder, and difficulty with comprehension; Axis III: Arthritis; Axis V: GAF=30. Claimant's behavior is considerably influenced by delusions or hallucinations or serious impairment in communication or judgments or inability to function in almost all areas. When seen, he was noted to be an alert and oriented person who presented himself in a very polite, honest manner. He was tearful at times and appropriately so. He definitely had a difficult time comprehending what was said and responding to questions appropriately even though he wanted to. He had trouble remembering details and possibly getting distracted easily enough that he could not really present everything. He reported feeling depressed, and his mind racing, and a few vegetative symptoms, but no suicidality. No anxiety or panic was reported, however, it is quite likely he may have some. There was no indication of any psychosis at this point. He appeared to be a rather simple person who has a tough time understanding why the world around him is so crooked. Most of his difficulties seemed to stem from possibly a combination of intellectual impairment and a learning disability more than depression which is a consequence of the former. (Department Exhibit A, pp 38-39).
- (12) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 135 lbs. Claimant completed the eighth grade.

- (13) Claimant had applied for 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-#11 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(A):

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.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking; or

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his January 24, 2012, 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 January 24, 2012, 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 June 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: 6/5/12

Date Mailed: 6/5/12

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

