

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-42387
Issue No.: 2009;4031
Case No.: [REDACTED]
Hearing Date: June 12, 2012
County: Kent

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on June 12, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist, [REDACTED] [REDACTED] and Assistant Payment Supervisor, [REDACTED] [REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On September 18, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

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 January 18, 2012, Claimant filed an application for MA-P and SDA benefits alleging disability.

- (2) On February 29, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that he was capable of performing other work, pursuant to 20 CFR 416.920(f).
- (3) On March 5, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On March 20, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 4, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retains the capacity to perform a wide range of simple, unskilled work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of bipolar disorder, depression and colitis.
- (7) Claimant is a 29 year old man whose birthday is [REDACTED] [REDACTED] Claimant is 5'11" tall and weighs 230 lbs. Claimant completed high school and attended some college.
- (8) 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 Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, (DHS or department), 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).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall

include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process to 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 an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he has not worked since 2009. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.
Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to bipolar disorder, depression and colitis.

A social worker completed an undated Mental Residual Functional Capacity Assessment on Claimant indicating Claimant was moderately limited in his ability to: understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a scheduled, maintain regular attendance, and be punctual with customary tolerances; sustain an ordinary routine without supervision; work in coordination with or proximity to others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes and set realistic goals or make plans independently of others.

On January 5, 2012, Claimant had an initial psychiatric evaluation at [REDACTED]. Claimant was discharged from prison with an order for outpatient treatment because they were concerned that his judgment may be bad and he may hurt others. According to the notes from prison, Claimant admitted missing marijuana and was irritated. He also apparently had been placed in isolation when he was thinking of hurting himself. He was also put into isolation because of an assault on another prisoner. Diagnosis: Axis I: Psychotic disorder; history of polysubstance abuse including alcohol, cocaine, marijuana and hallucinogens; Axis V: GAF=50.

On January 12, 2012, Claimant met with his social worker and self-reported less anxiety, although he was frustrated by his limits to areas in the community. His social worker discussed his concentration levels, focus on parole and efforts to help out at his parent's residence.

On January 31, 2012, Claimant met with his social worker. Claimant reported taking his prescribed medications each day. He self-reported that the Risperdal was effective in helping him to concentrate on tasks around the house, like walking his parent's dog and completing various chores as requested. He denied any sense of helplessness with conditions of parole.

On February 13, 2012, Claimant reported to his social worker that it was difficult for him to respond to the electronic tether. Although, he admitted that he was finding it less difficult when he was placed on restrictions for not reporting promptly. He discussed some of his concentration efforts as moderate during the past week.

On February 27, 2012, Claimant met with his social worker and reported making progress with looking at work under the guidelines of parole. He reported that in less than one half the year he will have completed his parole requirements. He denied any sense of helplessness or hopelessness regarding his efforts to stay on track with parole requirements. Sleep was reported as adequate for his needs.

On March 5, 2012, Claimant cancelled his medication review appointment.

On March 21, 2012, Claimant reported to his social worker that he would be on the electronic tether longer than he originally thought. He completed a two week assignment with [REDACTED] [REDACTED] [REDACTED] which he reported was his first opportunity to be independent while on tether. He denied any sense of helplessness or hopelessness regarding his symptoms. He denied any difficulties with taking medication as prescribed.

On March 23, 2012, Claimant attended his medication review appointment. Claimant was on Risperdal, Cogentin and Depakote. He stated he was doing well. His medications were continued.

On May 2, 2012, Claimant met with his social worker and they reviewed his progress with getting through parole. He was given information about managing symptoms and ways to keep his judgment and reasoning skills at a good level during the week. He denied any sense of helplessness or hopelessness regarding being under parole and having the criminal record of Criminal Sexual Conduct (CSC).

On May 16, 2012, Claimant informed his social worker that he received a new tether for CSC parole requirements. He reported that he was not currently hearing any auditory hallucinations, and his anxieties were less intrusive while he had purposeful activities in place. He has 18 months left on parole.

On May 30, 2012, Claimant met with his social worker and stated he was interested in being as independent as possible, with the added incentive of getting off the electronic tether. The social worker and Claimant looked at him being more responsible for tasks around the house, as well as continuing to keep symptoms low to lessen the anxiety levels.

On June 14, 2012, Claimant underwent a psychological evaluation by the Disability Determination Service. Claimant's file contained an initial psychiatric evaluation dated 1/5/12 with a diagnosis of psychotic disorder. The psychiatrist also noted Claimant's history of polysubstance abuse including alcohol, cocaine, marijuana and hallucinogens. The examining psychologist in this evaluation diagnosed Claimant with mood disorder and polysubstance Dependence in sustained full remission with a GAF of 54. Prognosis was fair. Claimant was diagnosed with a mood disorder based on his self reports of depression and mania, even though Claimant tended to state and then retract his descriptions about certain symptoms. While Claimant indicated he has had psychotic experiences, he denied having any since he got out of prison in November, 2011. The examining psychologist opined that Claimant is able to understand and follow directions that are fairly complex. He is of at least average intelligence, and thus should be capable of doing difficult work. Claimant's mood problems may be somewhat of a barrier, but with additional treatment he should be in a better position to resume work.

On June 22, 2012, Claimant met with his psychiatrist for his medication review. Claimant was on Risperdal, Cogentin and Depakote. He stated things were going okay. He was pleasant and cooperative. He denied any major side effects and stated his concentration was good. Claimant was continued on the medications.

On June 27, 2012, Claimant met with his social worker and self-reported that he had less anxiety on his prescribed medications. The social worker talked with Claimant about how anxiety looks when he is stressed during the week and about medications to effectively treat his symptoms and any concerns he had regarding his currently prescribed medications.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that he had bipolar disorder, depression and colitis. Based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1.

Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P/Retro-MA and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.

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

Date Signed: October 5, 2012

Date Mailed: October 8, 2012

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 mailing date of the rehearing decision.

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