

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201252934
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 19, 2012
Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

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, an in-person hearing was held on December 19, 2012. The claimant was represented by L&S, Associates. The claimant appeared and provided testimony. The department witnesses were [REDACTED] and [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 December 13, 2011, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) application?

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 14, 2011, claimant applied for MA with the Michigan Department of Human Services (DHS).
2. Claimant applied for retro MA.
3. On February 14, 2012, the MRT denied.
4. On February 22, 2012, the DHS issued notice.

5. On May 17, 2012, claimant filed a hearing request.
6. Claimant testified at the administrative hearing that he has a disability application pending with the Social Security Administration (SSA).
7. On July 6, 2012, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the claimant/representative's request to leave the record open for the submission of new and additional medical evidence, the SHRT again denied the application on February 4, 2013.
8. As of the date of hearing, claimant was a 54-year-old male standing 5'11" tall and weighing 145 pounds. Claimant has a 11th grade education.
9. Claimant testified that he has a history of alcohol abuse, but states that he quit drinking in December, 2011. The claimant smokes about 10 cigarettes per day and does not use illegal drugs.
10. Claimant does not have a driver's license.
11. Claimant testified that he works as a part-time dishwasher about 22 hours per week, Tuesday through Saturday about four hours per day. Prior to working as a dishwasher, claimant worked for 25 years buffing and polishing chair bases.
12. Claimant alleges disability on the basis of arthritis, back pain, liver problems, migraines, a learning disability, depression, anxiety and personality disorders.
13. The claimant was brought to the hospital by the police notably intoxicated on April 11, 2011. He had opened gasoline and poured some on himself, stating he was going to burn himself because he wanted to die. He was diagnosed with alcohol intoxication, suicidal ideation and depression. Claimant was admitted to the psychiatric ward from April 12, 2012 to April 20, 2012.
14. The claimant was admitted to Hope Network Integration Recovery on April 20, 2011. He was diagnosed with major depressive disorder, recurrent, severe, without psychosis and alcohol dependence. He was discharged on April 25, 2011.
15. On May 12, 2011, the claimant treating source completed a Mental Residual Functional Capacity Evaluation. The claimant was mostly moderately limited in all functional categories. The claimant was rated as markedly limited in the ability to understand and remember detailed instructions, the ability to carry out detailed instructions, the ability to perform activities within a schedule, maintain regular attendance, and be

punctual within customary tolerances, the ability to sustain an ordinary routine without supervision, the ability to 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 and the ability to accept instructions and response appropriately to criticism from supervisors.

16. An October 4, 2011 x-ray of the lumbar spine found disc degeneration and spondylosis, prominent at L1 – L2.
17. On October 6, 2011, the claimant was seen for an independent medical evaluation. The claimant indicated that he is usually in a depressed mood. He also stated that he is usually in pain from his back and his hands. His speech was clear and understandable. He denied hallucinations or delusions. He stated that he still thinks about suicide, but does not think he is a danger to himself or others. He was able to remain seated during the interview and did not appear to be physically uncomfortable while seated. He was able to make and maintain eye contact. He was able to present a fair history, recalling details and dates. He seemed able to understand questions fairly well. He seemed able to concentrate and focus adequately. He did not have any apparent difficulty interacting with the examiner. His affect was somewhat flat. He did not appear hyperactive or anxious. He was oriented x 3. The examiner opined that the claimant should be able to function in a simple unskilled work setting if not prevented by medical conditions.
18. Claimant was admitted to the hospital on December 12, 2011 due to alcohol intoxication and suicidal ideation. Claimant reported that he had been drinking a fifth of liquor over the last several weeks. He reported that he had chest pain. Acute myocardial infarction was ruled out. A stress test rules out myocardial ischemia.
19. Claimant was admitted to Hope Network Integrated Recovery (HNIR) on December 16, 2011. He indicated that he had gone off of his medications after the last admission to HNIR. He discharged on December 21, 2011.
20. A December 29, 2011 Mental Residual Functional Capacity Assessment found the claimant moderately limited in most categories of functioning. The claimant was not found to have any significant limitations in the ability to understand and remember one or two-step instructions, the ability to carry out one or two step instructions, the ability to interact with the general public, the ability to ask simple questions or request assistance, and the ability to maintain socially appropriate behavior and to adhere to basic standards or neatness and cleanliness.

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 Bridges Reference Manual (RFT).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...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 federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.

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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and

- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). The claimant has not presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for a continuous period of 12 months. 20 CFR 416.920(c). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled.

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. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability.

It is also noted that the Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. If the remaining

limitations would not be disabling, the substance abuse disorder is a contributing factor to the determination of disability. (20 CFR 404.1535 and 416.935). If so, the claimant is not disabled.

Claimant's testimony and the medical documentation indicate that claimant has a history of alcohol abuse. The applicable law is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

There is no medical evidence to support any finding of a liver problem, migraines, or a learning disability. The only other condition established by the medical evidence is disc degeneration and spondylosis, prominent at L1 – L2. However, this would not support any severe physical limitation on the part of the claimant. Therefore, the only condition that claimant has that is severe is his depression, which would clearly be better or resolve if her were to quit drinking and follow prescribed medical treatment, including taking medications as prescribed.

The federal law does not permit a finding of disability for persons whose primary impairment is substance abuse. P.L. 104-121. In addition, a client must follow prescribed medical treatment in order to be eligible for disability benefits. If prescribed medical treatment is not followed, the client cannot meet the disability standard. 20 CFR 416.930. For all of the foregoing reasons, the claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is **UPHELD**.

/s/ _____
Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 14, 2013
Date Mailed: March 14, 2013

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.

SLM/cr

cc:

