

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-58759
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: September 25, 2012
County: Genesee-02

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon 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, an in-person hearing was commenced on September 25, 2012, at the DHS office in Genesee County. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED]

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) benefits?

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 October 14, 2011, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On January 27, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P, Retro-MA and SDA. (Department Exhibit A, pp 1-2).
- (3) On April 24, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On June 7, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 23, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform a wide range of simple, unskilled work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of attention deficit hyper activity disorder (ADHD), bipolar disorder, anxiety, seizure disorder, syncope, status post fractured femur, right leg radiculopathy and low back pain.
- (7) On July 25, 2011, Claimant was evaluated by a psychiatrist at [REDACTED] [REDACTED] [REDACTED] ([REDACTED] Claimant's chief complaint is his inability to focus and concentrate. He stated he gets clouded and confused in his mind. He has not been on medication for a long time and he has been homeless the past two months due to his inability to get a job because he cannot concentrate and focus. He was dressed and groomed okay, but was sad and worried. He is feeling frustrated by his inability to sit still and since his mother's death he is more depressed. His memory is somewhat impaired, although he is able to do very simple calculation. His insight and judgment are fair to limited. Diagnosis: Axis I: Attention-deficit/hyperactivity disorder (ADHD); Bipolar disorder; Alcohol dependence; Cannabis abuse; Cocaine abuse; Axis V: GAF=40. (Department Exhibit A, pp 13-15).
- (8) On October 21, 2011, Claimant was taken to the emergency department after passing out twice outside his homeless shelter. He suffered lacerations and abrasions on the right side of his face. He has not had any previous episodes of this type before. He was diagnosed with seizure disorder and syncope. Claimant was stabilized and discharged and instructed not to drive until seen by his primary care physician. (Claimant Exhibit A, pp 45-58).
- (9) On November 15, 2011, Claimant underwent a medical examination on behalf of the department. Claimant was diagnosed with right hip and knee pain, right leg radiculopathy and low back pain. The examining physician noted Claimant's condition was deteriorating. (Department Exhibit A, pp 3-4).
- (10) On November 16, 2011, Claimant participated in a Mental Residual Functional Capacity Assessment on behalf of the department. Claimant is markedly limited in his ability to remember locations and work-like procedures; understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; sustain an ordinary routine without supervision; work in coordination with or proximity to others without being distracted by them; make simple work-related decisions and

in his 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. (Department Exhibit A, pp 6-9).

- (11) On December 14, 2011, Claimant was admitted to [REDACTED] [REDACTED]. He complains of feeling depressed. During the evaluation, he admits to attending [REDACTED] [REDACTED] and taking medications. He was hyperverbal, with pressured speech and circumstantial, rambling, and talking non-stop. He complains of hearing voices, feels like people are talking about him trying to harm him. He is depressed, has mood swings, being hyperactive and hyper verbal. He has racing thoughts, anxiety and poor impulse control. Insight and judgment are poor. He is sleeping poorly but has a fair appetite. Diagnosis : Axis I: ADHD; Bipolar disorder, depressed; Alcohol dependence, Cannabis abuse; Axis IV: Economic problems; Housing problems; Axis V: GAF=30. (Claimant Exhibit A, pp 136-142).
- (12) On December 31, 2011, Claimant was admitted to [REDACTED] [REDACTED]. On January 4, 2012, Claimant's case worker met him at the hospital. Claimant reports that he is feeling depressed and stressed. He admitted to drinking alcohol and being non-compliant with his medications. Claimant was informed he was being discharged and became upset. He is homeless, disheveled and depressed. He presents with limited to no insight and irritated. (Claimant Exhibit A, pp 104-109).
- (13) On February 2, 2012, Claimant underwent a psychiatric evaluation on behalf of [REDACTED] [REDACTED] [REDACTED]. He is diagnosed with ADHD and bipolar disorder. His prognosis is fair to guarded depending on social stressors. Compliance with treatment is fair to poor. His speech is tangential and confused. He does not end to tasks and has trouble focusing, concentrating and organizing thoughts. He adapts poorly to change and avoids conflict. He exhibits poor self-esteem. His response to stress typically interferes with work performance. He becomes frustrated if not able to complete or remember tasks. He exhibits nervousness around a large group of people. He is unable to explain ideas and skills clearly. He lacks initiative and energy to look for work independently. He exhibits low tolerance for rejections during job seeking. He will not accurately anticipate when to ask for assistance. Due to his physical disability, he will have difficulty performing tasks that require speed. He will have difficulty functioning in a competitive work environment and maintaining punctuality and attendance. (Claimant Exhibit A, pp 30-31).
- (14) On March 13, 2012, Claimant followed up with his case worker at [REDACTED]. He is homeless and has been staying on the streets at night. He reports

that he is medication compliant. He reports a severe increase in symptoms of mental illness. He reported passive suicidal thoughts, stating he was depressed, stressed out and hopeless. He was tearful at times, depressed mood, sad affect. He had normal motor activity and pressured speech. His case worker advocated for his hospitalization noting he was currently at moderate to high risk for decompensation due to current passive thoughts of suicide. (Claimant Exhibit A, pp 63-66).

- (15) On April 10, 2012, Claimant met with his case worker at [REDACTED]. Claimant has been staying at [REDACTED]. He presented with adequate grooming and dress. His mood was agitated, with a regulated affect. He was hyperverbal with agitated motor activity. His thought processes were tangential and unorganized. He had extreme somatic complaints and normal thought content. His case worker noted Claimant was at moderate risk for decompensation. (Claimant Exhibit A, pp 59-60).
- (16) On April 16, 2012, Claimant participated in a medical examination on behalf of [REDACTED]. Claimant was anxious and has back, leg and knee pain. The exam indicated Claimant would have limitations kneeling, standing, lifting, pushing, stooping, climbing and pulling. (Claimant Exhibit A, pp 61-62).
- (17) On June 12, 2012, Claimant was evaluated by an orthopedic surgeon. His chief complaint was right knee pain since 2000. He complained of right lower extremity and back area pain. He had a right retrograde femur nail done status post gunshot. He has a visible limb length shortening.
- (18) Claimant is a 29 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 165 lbs. Claimant completed a high school equivalent education. He has not worked since May, 2009.
- (19) 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-#18 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, his mental impairments meet or equal Listing 12.04(A) and 12.04(B):

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
3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
- 1. Marked restriction of activities of daily living; or
 - 2. Marked difficulties in maintaining social functioning; or
 - 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 - 4. Repeated episodes of decompensation, each of extended duration;

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his October 14, 2011, MA/Retro-MA/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 October 14, 2011, MA/Retro-MA/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 October, 2013, 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.

It is SO ORDERED.

/s/

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

Date Signed: October 15, 2012

Date Mailed: October 15, 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 receipt date of the rehearing decision.

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