

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-59747
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: September 12, 2012
County: Oceana

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, a telephone hearing was commenced on September 12, 2012, from Lansing, Michigan. 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 March 7, 2012, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On April 16, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P, Retro-MA and SDA. (Department Exhibit A, pp 4-5).
- (3) On April 25, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On June 13, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On August 1, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform simple and repetitive tasks. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of depression, intermittent explosive disorder, hypothyroidism, anorexia and lower back pain.
- (7) Claimant is a 22 year old man whose birthday is [REDACTED] Claimant is 5'9" tall and weighs 155 lbs. Claimant completed a high school equivalent education.
- (8) 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.

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 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 February, 2011. 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 depression, intermittent explosive disorder, hypothyroidism, anorexia and lower back pain.

On August 10, 2011, Claimant presented at [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) stating he has been depressed for years and it is getting worse. He reported that he had experienced chronic depressed mood, poor concentration, anhedonia, insomnia and low self-esteem since he was a child. He stated that he began experiencing suicidal ideation at the age of 10 or 12, but did not formulate a suicidal plan or make an attempt until he was an adult. His first suicide attempt was while stationed on a military base a couple of years ago. He overdosed on prescription medication, was treated in a hospital for one week and transferred to a military psychiatric hospital for one month. He also reported engaging in self-injury while in the military. He would make superficial cuts in areas hidden by his clothing. None of the injuries required medical care. He reported that he thinks about cutting now, but has not engaged in it for a few months. He was alert and oriented to person, place, time and situation. His clothing appeared stained and his pants were torn. His hair was uncombed and he had not shaved. His affect was flat. Eye contact was limited. Mood was reportedly depressed. He did not present with any odd mannerisms or unusual behaviors. Thought processes appeared unremarkable. Thought content did not include paranoia, delusions, sensory hallucinations or homicidal ideation. He did endorse suicidal ideation off and on which did not include a suicidal plan per his report. Immediate, recent, and remote memory appeared intact. Intelligence appeared to be within average range. Judgment and insight appeared fair as evidenced by self-report. He felt his weight was stable; however, he no longer really enjoyed food. Reportedly, self-care had deteriorated and he only showered if he had an appointment. He reported that he was using marijuana daily, in the evening to help him sleep. He did not present with indicators of substance dependence and appeared motivated to stop using, stating that he would really like to try medication that really helped with his sleep and depression and was not illegal. Diagnosis: Axis I: Major Depressive Disorder, Recurrent, Severe w/ o Psychotic Features; Cannabis Abuse; Axis III: Hypothyroid; Axis IV: Educational, Occupational and Economic Problems; Axis V: GAF=45.

On September 9, 2011, Claimant underwent a psychiatric evaluation. Claimant reported a history of depression or dysphoria since the age of 10 or 11. He stated he began using marijuana in the eighth grade as a means to deal with his depression, anxiety and social problems. He did not have any formal mental health services until his single psychiatric hospitalization in the military after he became depressed and overdosed. He had carried the diagnosis of dysthymia in the past, although it appeared that he had both a dysthymic disorder and a major depressive disorder. He also reported excessive worry, irritability, poor concentration, hypsomnia, poor ADL's, social isolation and anhedonia when he was at his worst and daily use of marijuana if he could get it. He reported he used marijuana because he "self-medicates." He currently resided with his parents since being discharged from the military. He presented casually but appropriately attired with no impairment in his hygiene or grooming. There were no unusual mannerisms. His motor activity was within normal limits. He maintained good eye contact. His speech was of a normal rate, rhythm, and volume.

He described his mood as frequently anxious and depressed. His affect reflected the anxiety, but was otherwise stable. His thoughts were linear, logical and goal directed. There were no reported or observed psychotic symptoms or other cognitive issues. He denied any current suicidal ideation, intent or plan. There was no homicidal ideation. He was alert and oriented in all spheres. Both concentration and memory were intact to interview. He did not have any apparent problems with immediate, recent, or remote recall and gave a coherent history congruent with past history. He did not appear distracted and answered questions appropriately. His insight and judgment were intact. He was friendly and cooperative, but appeared to be somewhat ambivalent at times about medications in general given the poor response in the past. Prognosis was fair but dependent on overall long-term adherence and motivation. Diagnosis: Axis I: Major Depressive Disorder, Recurrent, Severe w/o Psychotic Features; Cannabis Abuse; Dysthymic Disorder; Axis III: Possible thyroid issues by history; Axis IV: Educational, Occupational and Economic Problems; Axis V: GAF=51.

On December 5, 2011, Claimant met with his therapist at [REDACTED]. Claimant stopped taking the Cymbalta secondary to severe headaches. Once he stopped the Cymbalta, the headaches disappeared. He remained ambivalent about starting a different antidepressant as trials in the past had not been efficacious and he felt he "will always be depressed." He had started therapy and was equally ambivalent about it as he states it never helped him in the past. He expressed interest in trying to get a medical marijuana card in the future. He was looking for work but admitted to some poor motivation in doing so. There were no reported problems with appetite. He expressed interest in one more trial, and Celexa was reviewed. He was alert and oriented. Affect was reactive and stable. Mood was described as dysphoric, chronically so. There were no suicidal or homicidal thoughts and no psychotic symptoms. He displayed a sense of humor. Eye contact was maintained. Speech was within normal limits. Hygiene and grooming were good. There were no unusual mannerisms. Insight and judgment were fair. He continued to report dysphoria. Diagnosis: Axis I: Major Depressive Disorder, Recurrent, Severe w/o Psychotic Features; Dysthymic Disorder; Axis III: Possible thyroid issues by history; Axis IV: Educational, Occupational and Economic Problems; Axis V: GAF=51.

On March 2, 2012, Claimant met with his therapist at [REDACTED]. Claimant was homeless and living out of his truck. He was told he needed to get out of his parents home by the spring and he chose to leave a few weekends ago due to conflicts in relationships at home. He reported feeling that a thumb had been lifted since moving out and his mood had never been better. He stated he had his friends he was staying in contact with, but could not stay with them. He was continuing to not take any medications, as he had tried all different kinds, with no success. Diagnosis: Axis I: Major Depressive Disorder, Recurrent, Severe w/o Psychotic Features; Cannabis Abuse; Dysthymic Disorder; Axis III: Possible thyroid issues by history; Axis IV: Educational, Occupational and Economic Problems; Axis V: GAF=51.

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 a history of depression, intermittent explosive disorder, hypothyroidism, anorexia and lower back pain. 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 either.

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 benefit program.

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: September 24, 2012

Date Mailed: September 24, 2012

2012-59747/VLA

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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