

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-71693
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 27, 2012
County: Monroe

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 November 27, 2012, at the Monroe County DHS office. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. 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)?

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 February 3, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On March 12, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA and SDA indicating Claimant's impairment lacked duration. (Depart Ex. A, pp 9-10).
- (3) On May 24, 2012, the department caseworker sent Claimant's IMN representative notice that his application was denied.
- (4) On August 15, 2012, Claimant's representative timely filed a request for a hearing to contest the department's negative action.

- (5) On September 27, 2012, the State Hearing Review Team (SHRT) found Claimant's condition was improving or expected to improve within 12 months from date of onset or from date of application. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of sinus tachycardia, alcohol abuse, liver cirrhosis, seizures, chronic obstructive pulmonary disease (COPD), depression, hypothyroidism, hypertension, and diabetes.
- (7) On January 12, 2011, an ambulance was dispatched to Claimant's residence. Claimant presented with a psychiatric disorder which required restraints and monitoring. Claimant appeared to be having a mental breakdown. While speaking with Claimant, Claimant ran out of the building and was caught by the police and handcuffed. He was moved to a stretcher and secured with safety belts. Vitals could not be established based on Claimant's failure to cooperate. (Depart Ex. A, pp 18-19).
- (8) On August 31, 2011, Claimant presented to the emergency department suffering from anxiety. He was discharged and referred to social services. (Depart Ex. A, pp 26-27).
- (9) On September 5, 2011, Claimant was seen in the emergency department for a drug overdose. Claimant told EMS that he took 40 pills along with one pint of Vodka. Claimant was alert to person, place and time and stated he wanted to kill himself. At the emergency department, Claimant stated he had drank a considerable amount of alcohol and taken some benzodiazepines. The next morning, Claimant insisted he was not trying to commit suicide. Claimant stated he had just taken some sleeping pills to help him sleep. He was very insistent on leaving the emergency department. (Depart Ex. A, pp 34-40).
- (10) On January 1, 2012, Claimant was brought into the emergency department by a friend who stated that Claimant woke up disoriented and tearful and was not being himself. In the emergency department, Claimant complained that he had been having a nervous breakdown and was found to be poorly responsive after a night of drinking. Claimant was noted to have a history of suicidal behavior, with a psychiatric hospitalization a month ago following a suicide attempt. Claimant stated he had been depressed. He had been having a nervous breakdown. He cannot sleep. He cannot eat. He thinks he has lost approximately 90 pounds of weight in the last month as he has been a diabetic. He was 31 years old when he was in a psychiatric hospital in upper Michigan. He had much difficulty recalling his recent admission as he noted he attempted suicide by overdosing on pills. Claimant was markedly despondent, depressed, markedly overwhelmed, not exhibiting any auditory or visual hallucinations; however, he was quite distractible, with difficulty focusing/concentrating. He was unable to recall his previous suicide attempt, however, he noted he called 911 as he took all his pills

and was in a psychiatric facility. However, he could not remember the details as to which hospital. He was referred for a psychiatric hospitalization for psychiatric stabilization. (Depart Ex. A, pp 80-97).

- (11) On January 4, 2012, Claimant presented to the emergency room with an altered mental status. According to EMS, Claimant had fallen earlier in the day and had a hematoma on the left side of his forehead. Claimant stated he felt he was having an anxiety attack. Claimant has a history of alcohol use disorder with severe mental disorder. He had acute alcohol intoxication, and a head injury, and went into DTs and toxic encephalopathy. His serum ammonia level was high. He was given lactulose and seen by psychiatry. Claimant may need to come off some of his psychotropic medications. He has been hallucinating and not sleeping well. He was put on Triazodone. Claimant was seen in consultation for pancytopenia. He had an extensive workup done which confirmed the symptoms are from hypersplenism secondary to alcoholic liver disease and alcoholism. He also had borderline diabetes. He was medically cleared for possible admission to Pineview. Claimant may need bone marrow down the road if the pancytopenia does not improve. He was discharged on January 11, 2012, with a diagnosis of head injury, hepatic encephalopathy, delirium tremens (DTs), borderline diabetes, hypertension, pancytopenia secondary to splenism secondary to chronic alcoholism, anxiety, and depression. (Depart Ex. A, pp 55-73).
- (12) On February 23, 2012, Claimant was psychiatrically hospitalized at [REDACTED] [REDACTED] [REDACTED]. In the emergency room he presented with suicidal ideations and a blood alcohol level of .209. He has been hospitalized 7 times for suicidal ideations in his lifetime. He was first hospitalized 16 years ago when his wife left him. Since that time, he reports two suicide attempts from cutting his wrists and pills prior to services at [REDACTED] [REDACTED] [REDACTED]. He reports being in substance abuse treatments in the past and had two inpatient long term stays. He described his symptoms as feeling hopeless, helpless, depressed, lack of sleep, not eating, and having suicidal ideations. He was diagnosed with diabetes 4 years ago and has not been following through with doctor's recommendations. Diagnosis: Axis I: Major depression, recurrent, severe; Alcohol dependent with physiological dependence; Axis II: Personality disorder; Axis V: GAF=45. (Claimant Ex. A, pp 61-69).
- (13) On July 19, 2012, an ambulance was dispatched to Claimant's residence for a breathing problem. Claimant presented with alcohol and an unsteady gait. His speech was slurred and he was sitting on the floor leaning against pillows. Claimant admitted to alcoholism history and of drinking vodka. He was unable to answer any questions related to time and date. He was transported to the emergency department for further evaluation. (Claimant Ex. A, pp 54-55).

- (14) On August 21, 2012, Claimant was admitted to the hospital for a drug overdose of Trazodone and Buspar and his history of depression. Claimant also admitted a history of alcoholism. Claimant was seen because of abdominal pain, nausea, and vomiting. Claimant admitted he had a previous history of DTs. He was shaking all over. The examining physician opined that Claimant appeared to be going through the DTs. He was very nervous and seeing things on the walls. At times he was incoherent. He had been petitioned with a first clinical certification on the chart due to his suicidal intent. He has a previous history significant for bipolar disorder. He was complaining of mood swings, initial insomnia, anxiety, agitation, and panic attacks up to three times a day. He had a history of alcohol withdrawal seizures along with acute alcohol withdrawal in the past. He had marginal grooming and poor hygiene. He had halitosis as well as body odor. He was lying in the hospital bed with visible tremors in his upper and lower extremities. His mood was depressed with a congruent affect. He was significantly impulsive. He had limited judgment and insight. Diagnosis: Axis I: Bipolar disorder; Alcohol dependent; Axis III: Diabetes, hypertension, hypothyroidism and acute alcohol withdrawal; Axis V: GAF=20. Claimant was discharged on August 24, 2012, with a diagnosis of DTs, acute depression, acute pancreatitis, drug overdose-suicide, suicidal ideation and acute alcohol intoxication. (Claimant Ex. A, pp 17-45).
- (15) On September 3, 2012, the ambulance was dispatched to Claimant's residence. Claimant was talking to the police when the ambulance arrived. Claimant was depressed and did not trust himself with his medications. Claimant was transported to the emergency department. (Claimant Ex. A, pp 15-16).
- (16) On December 30, 2012, an ambulance was dispatched to Claimant's residence for an overdose. On arrival, Claimant was talking to the fire and police departments. The fire department gave EMS a bag containing five pill bottles and another with pills missing, but not empty. Claimant refused to go to the hospital until threatened with arrest by the police. Claimant was transported to the emergency department and his care was turned over to the emergency room staff. (Claimant Ex. A, pp 1-10).
- (17) Claimant is a 48 year old man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 263 lbs. Claimant completed high school.
- (18) Claimant had been denied 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).

As an initial matter, Claimant stated during the hearing that he was receiving SDA through [REDACTED] [REDACTED] [REDACTED]. Therefore, this decision only addresses the denial of Medicaid.

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 Facts #6-#17 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, or when the requirements in C 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, Retro-MA and SDA programs. Consequently, the department's denial of his February 3, 2012, MA/Retro-MA and SDA application cannot be upheld.

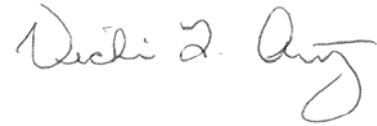
DECISION AND ORDER

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 February 3, 2012, MA and Retro-MA 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 April, 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.



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

Date Signed: April 12, 2013

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

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

2012-71693/VLA

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cc:

