

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

IN THE MATTER OF:



Reg. No.: 2012-74949
Issue No.: 2009; 4031
Case No.:
Hearing Date: December 19, 2012
County: Macomb-20

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 December 19, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Medical Contact Worker

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 June 12, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On August 16, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P, indicating that Claimant is capable of past relevant work, pursuant to 20 CFR 416.920(E). (Department Exhibit A, pp 1-2).
- (3) On August 16, 2012, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On August 29, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On October 9, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform a wide range of light work. SDA was denied because the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days. (Department Exhibit B).
- (6) Claimant has a history of stroke, seizures, aneurysm, multiple head injuries, depression, hypertension and insomnia.
- (7) Claimant is a 47 year old man whose birthday is [REDACTED]. Claimant is 6'0" tall and weighs 182 lbs. Claimant completed high school. He has not worked since November, 2011.
- (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 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 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 November, 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 stroke, seizures, aneurysm, multiple head injuries, depression, hypertension and insomnia.

On April 9, 2010, Claimant had a normal electroencephalogram (EEG). The EEG showed no focal, lateralized, or epileptiform features.

On February 25, 2011, Claimant saw his primary care physician after a recent emergency room visit for an episode of chest pain on 2/7/11. He was worked up in the emergency room and his electrocardiogram (EKG) was normal and his Troponins were negative. He was given Toradol for pain medication and discharged with instructions to follow-up with his primary care physician. Recent workup was negative for any acute coronary syndrome.

On June 23, 2011, Claimant was evaluated by a neurologist for multiple medical problems including headaches, seizures and left facial pain. He had a history of hypertension, right middle cerebral artery (MCA) aneurysm rupture in 2001 leading to headache and seizures. His last seizure was 3 years ago and he had been on Dilantin which he had been taking consistently and his seizures were well-controlled. His blood pressure was 181/111 and the repeat was 191/115 with a heart rate of 81. Later the blood pressure came down to 162/103 with a heart rate of 68. On motor exam, he was able to stand on heels, toes and tandem gait. He had no difference in fine finger movements or pronator drift. He had three normal EEGs done in 2001, 2002, and 2010. He had an MRI in 2005 which showed right MCA territory encephalomalacia. The need for aspirin and Plavix was being reassessed particularly with a history of untreated aneurysm, though it was not visible on the last 4 vessel angiogram.

On November 10, 2011, Claimant followed up with his primary care physician for medication refills. Claimant had a history of hypertension and his blood pressure was running high on last 4 out of 5 visits so his dosage of Lisinopril was increased. He also had a history of seizures secondary to trauma. His last seizure episode was 3 years ago. He continued to be on Phenytoin and basically did not report any seizure events. He reported that he did not need a refill of the medication. He also had a history of cerebrovascular accident (CVA) and continued to be on aspirin and statins. He was currently stable and had no neurologic deficits.

On April 11, 2012, Claimant had a medical evaluation for the [REDACTED] [REDACTED]. Claimant's chief complaint was disability due to stroke. Claimant had a ruptured cerebral aneurysm in the year 2000, while imprisoned. He reported subsequent left-sided weakness, speech impairment and memory deficits. He underwent physical therapy and speech therapy. He reportedly declined to have surgery to repair the aneurysm. He stated he still gets occasional headaches and dizziness, and blurred vision in both eyes. He also reported numbness and feelings of weakness in the left upper extremity and left lower extremity. His last seizure was 2 ½ years ago. Based on the examination, the physician opined that Claimant had no limitations secondary to stroke or previously ruptured cerebral aneurysm.

On July 31, 2012, Claimant underwent a medical examination on behalf of the department. Claimant was diagnosed with a seizure disorder, a brain aneurysm and hypertension. The examining physician opined that Claimant's condition was stable.

On September 11, 2012, Claimant underwent a psychiatric evaluation by community mental health. He had a history of CVA and aneurysm in 2000. He had physical therapy as he was unable to walk. He denied head injury. He had a history of seizures with his last seizure 2 ½ years ago. He had not seen a neurologist because he had lost his insurance. He was cooperative with good eye contact. His thought process was logical. He had no memory impairment and was of average intelligence. He denied hallucinations and delusions. He was oriented in all areas with good judgment and insight. Diagnosis: Axis I: Major Depressive Disorder, recurrent, severe; Posttraumatic Stress Disorder; Axis II: Paranoid Personality Disorder; Axis IV: Economic problems, problem accessing healthcare, occupational problems, housing problems, problem with primary support group, and problem related to social environment. Axis V: GAF=42. The examining psychiatrist opined that Claimant presented with symptoms related to major depression, including feeling sad, difficulties with sleep, feelings of hopelessness, helplessness all of the time with consistent irritability.

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 stroke, seizures, aneurysm, multiple head injuries, depression, hypertension and insomnia. 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 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: January 7, 2013

Date Mailed: January 8, 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.

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

2012-74949/VLA

Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

