

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

IN THE MATTER OF:



Reg. No: 2012-20579
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
February 14, 2012
DHS MA Special Processing

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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, a 3-way telephone hearing was held on February 14, 2012. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) 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 June 20, 2011, Claimant filed an application for MA benefits alleging disability.
- (2) On November 28, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that Claimant had a non-exertional impairment.
- (3) On December 14, 2011, the department sent out notice to Claimant that her application for Medicaid had been denied.
- (4) On December 21, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On January 3, 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 simple, unskilled, medium work. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of alcohol dependency, bipolar disorder, obsessive-compulsive disorder (OCD), depression, panic attacks and neck and back pain.
- (7) Claimant is a 46 year old woman whose birthday is [REDACTED]. Claimant is 5'1" tall and weighs 120 lbs. Claimant completed four years of college. She is currently working 13 hours a week as a learning assistant.
- (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").

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, the Claimant is not involved in substantial gainful activity and testified that she is only working 13 hours a week. Therefore, she 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 alcohol dependency, bipolar disorder, obsessive-compulsive disorder (OCD), depression, panic attacks and neck and back pain.

On September 6, 2005, Claimant was admitted to the hospital for alcohol abuse and withdrawal, abdominal pain, gastritis versus peptic ulcer disease versus pancreatitis, urinary tract infection, vaginal bleeding, laryngopharyngitis, bipolar disorder, and substance abuse. The abdominal pain was thought to be alcohol-induced gastritis, versus peptic ulcer versus pancreatitis. She was evaluated by a psychiatrist and diagnosed with alcohol dependence with major depression. She was discharged on September 9, 2005, with medications and instructions to contact the treatment center.

On May 10, 2010, Claimant was seen in the emergency room for an allergic reaction to new clothing. Neurological assessment showed Claimant's affect was appropriate, she was alert and oriented to person, place and time. She was prescribed Prednisone and Benadryl and discharged.

On March 18, 2011, Claimant saw her therapist. She arrived late for the appointment stating she ran into construction and had to find an alternate route. She reported a lot less anxiety when driving. Claimant reviewed the SSA website with her therapist and they discussed how to apply. Claimant reported that her medications were working ok

now since the new doctor had changed the prescriptions. She stated she needed to be on medications because of bipolar. She continued to attend school and was working part-time. She continued to complain of anxiety and pain. She was going to apply for social security disability.

On April 22, 2011, Claimant saw her therapist and reported getting more responsibility at work and that her boss told her that she does really well. Claimant is thinking of getting a job in day care to get used to working with children. Claimant was dressed neatly and professionally. She stated that her children motivate her to do better.

On June 15, 2011, Claimant went to the emergency department complaining of chest pain, shortness of breath, leg numbness, and right arm pain. Claimant had no back pain. Claimant was calm, alert and oriented to person, place, and time. Lab results and chest x-ray were normal. The EKG showed normal axis, normal sinus rhythm and no acute ST changes and normal intervals. Claimant appeared to improve after being given Tramadol. Claimant was discharged and instructed to take Motrin for pain. Drug screen was positive for marijuana.

On July 14, 2011, Claimant's cervical spine x-ray showed mild straightening of the normal cervical lordosis, moderate disc space narrowing and spondylosis at C4-C5, C5-C6, and C6-C7 intervals. Claimant's lumbar spine x-ray showed moderate disc space narrowing at L5-S1 and minimal disc space narrowing at the remaining lumbar levels.

On August 16, 2011, Claimant underwent a medical examination by her doctor showing she was currently diagnosed with cervical spine deterioration and chronic low back pain. The physician opined that Claimant had normal mental functioning and was stable but needed tumors removed from her right thigh and right back.

On September 9, 2011, Claimant drove herself to see her therapist and was walking slowly. Claimant reported being in severe pain from a back sprain.

On October 7, 2011, Claimant saw her therapist and reported a lot of stress from school and from her husband. Claimant was scheduled to have a psychiatric evaluation on October 1, 2011, for social security disability. Claimant was getting certified to be an international tutor.

On October 24, 2011, Claimant underwent a psychiatric examination on behalf of the department. Claimant drove to the examination alone, and wore light make-up. Her hygiene and grooming were fair. Her gait was normal. She sat in the chair comfortably and did not display any unusual or bizarre behavior. She was in touch with reality. Her self-esteem was fair and her psychomotor activity was normal. She had limited insight. Her speech was clear and coherent, but circumstantial. Her thinking process was well organized and easy to follow. She was cooperative during the evaluation. Her affect was appropriate to the thought content and her mood was calm. She was alert and oriented to time, place, and person. The psychiatrist found that Claimant gets along fairly well with people. She is not aggressive or assaultive towards others. She did not

have any memory problems. She was able to understand, remember, and follow through with directions when they were given to her. The Mental Residual Functional Capacity Assessment showed Claimant had no limitations in Understanding and Memory, Sustained Concentration and Persistence, Social Interaction, or Adaptation. Diagnoses: Axis I: Bipolar Disorder, Panic Disorder with Agoraphobia, Obsessive Compulsive Disorder and History of Alcohol Dependence. GAF 45. Prognosis was guarded.

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.

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.

It is SO ORDERED.

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

Date Signed: 3/8/12 _____

Date Mailed: 3/8/12 _____

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.

VLA/ds

■ [REDACTED]