

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-56392
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 21, 2012
County: Newaygo

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 August 21, 2012, from Lansing, Michigan. Claimant, accompanied by his [REDACTED] [REDACTED] therapist, personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Lead Eligibility Specialist [REDACTED] [REDACTED] and Eligibility Specialist [REDACTED] [REDACTED].

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On December 12, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA) and Retro-MA?

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 December 12, 2011, Claimant filed an application for MA/Retro-MA benefits alleging disability.

- (2) On April 24, 2012, the Medical Review Team (MRT) denied Claimant's application for MA -P and Retro-MA, indicating he was capable of performing other work. (Department Exhibit A, pp 10-11).
- (3) On April 27, 2012, the department caseworker sent Claimant notice that his application was denied.
- (4) On May 30, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On July 13, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform simple repetitive tasks that avoid more than concentrated exposure to pulmonary irritants. (Department Exhibit B, pp 1-2).
- (6) Claimant has a history of emphysema, chronic obstructive pulmonary disorder, ulcers, depression, bipolar disorder, schizophrenia and anxiety.
- (7) Claimant is a 46 year old man whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 139 lbs. Claimant completed the eleventh grade participating in special education classes.
- (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).

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 he has not worked since 2010. 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 emphysema, chronic obstructive pulmonary disorder, ulcers, depression, bipolar disorder, schizophrenia and anxiety.

On December 14, 2011, Claimant went to the emergency department for an injured hand after punching a wall. X-rays revealed an oblique nondisplaced angulated fracture of the shaft of the fifth metacarpal bone. The distal end of the fifth metacarpal bone is angulated approximately 52 degrees. There is no joint involvement. The rest of the hand appeared intact.

On February 21, 2012, Claimant underwent a psychiatric examination by his treating psychiatrist. Claimant appeared sloppy and disheveled. He was tearful and had a depressed mood and flat affect. He appears older than his stated age. He has less than a high school education and a sporadic work history. Claimant stated that if he does not get help with his anger and life he will kill himself. He has broken his hand because he hit a wall instead of his girlfriend. His short term memory and long term memory were mildly impaired. He has significant impairment on abstract ability, insight, judgment and his intellectual level is way below average. He is independent of all activities of daily living, but when he is stressed he cannot eat and his sleep is disrupted due to racing thoughts. He states that he feels like his brain short circuits due to the constant thoughts and worries he experiences. He is currently homeless. Diagnosis: Axis I: Bipolar Disorder, most recent episode manic; Paranoid Personality Disorder; Axis III: Emphysema; Axis V: GAF=40.

On April 10, 2012, Claimant underwent a medical examination on behalf of the department. Claimant has bipolar disorder, schizophrenia, emphysema and a left hand injury. He customarily worked in concrete and his work ended on a seasonal basis in 2010. He has not been back to work. He did have a left forearm chainsaw injury many years ago and had extensive surgery to repair tendons and nerves. He still has reduced sensation over the left 4th and 5th fingers and reduced active extension of them. Inspection of the hands reveals intrinsic muscle atrophy of the left hand and inability to oppose the left thumb tip to the small finger. He also has inability to fully bring the fingers together. Impressions: Mental health problems, Emphysema and Left hand dysfunction post ulnar nerve injury and tendon injury. The examining physician opined that now that he has COPD symptoms, work in his customary concrete field would be challenging in the humid weather. His dyspnea on exertion is sometimes associated with chest tightness in the left pectoral area. This does not radiate. Claimant was advised there was a chance the dyspnea is due to the heart more than the lungs and a treadmill test may be necessary to clarify that.

On June 5, 2012, Claimant saw his primary care physician to complete his disability paperwork. He has COPD but has not had pulmonary function tests in numerous years. He has shortness of breath on exertion which could be related to COPD as he does continue to smoke. His bipolar affective disorder is not well managed and he will be referred back to community mental health for medications.

On August 1, 2012, Claimant met with a physician as a new patient to review his chronic problems. He is seen in consultation for COPD. The symptoms have been worsening. COPD symptoms include dyspnea with exertion. Aggravating factors include moderate activity. He also has a peptic ulcer. He had a normal range of motion, muscle strength, and stability in all extremities with no pain. He was alert and oriented to time, place, person and situation. His memory was intact. He had normal insight and judgment. He demonstrated appropriate mood and affect. He was counseled on tobacco cessation.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical and mental disabling impairments due to emphysema, chronic obstructive pulmonary disorder, ulcers, depression, bipolar disorder, schizophrenia and anxiety.

Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other occupations. As a result, the analysis moves to Step 5.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 46 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant had completed the eleventh grade. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). Where an individual has an impairment or combination of impairments that

results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from emphysema, chronic obstructive pulmonary disorder, ulcers, depression, bipolar disorder, schizophrenia and anxiety. The objective medical evidence lists no limitations. In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.17, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

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/Retro-MA benefit programs. 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 2, 2013

Date Mailed: January 2, 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

VLA/las

cc:

