

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-65780
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: October 16, 2012
County: Shiawassee

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 October 16, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payment Supervisor [REDACTED] and 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 21, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On May 29, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P, indicating that Claimant is physically capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied due to lack of duration.
- (3) On June 4, 2012, the department sent out notice to Claimant that his application for Medicaid had been denied.
- (4) On June 15, 2012, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On August 31, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform unskilled work. (Department Exhibit B).
- (6) Claimant has a history of bipolar disorder.
- (7) Claimant testified during the hearing that he is currently drawing unemployment and last worked in November, 2011. When asked if he could work, Claimant stated, "yes, I can work."
- (8) Claimant is a 50 year old man whose birthday is December 1, 1961. Claimant is 5'10" tall and weighs 205 lbs. Claimant completed high school.
- (9) 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 he is receiving unemployment and 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 bipolar disorder.

On May 23, 2011, Claimant presented to the emergency room depressed. He has a history of depression and has been on multiple medications in the past but is not taking any currently, except for Ativan and Neurontin. He states that all he wants to do is lie in bed. His father brought Claimant to the ER with a note from Claimant's mother also stating that Claimant has no interests, he is helpless, hopeless and does not want to get up, even to eat. Claimant gets panic attacks if he goes outside and goes to the store even to pick up his prescriptions. Claimant came to the ER stating that he just cannot live this way anymore. It has been going on for three months. On presentation, he is awake and alert. He does have a flat affect and is obviously depressed. He was diagnosed with major depression with suicidal ideation and admitted to the stress unit of the hospital. He was discharged on May 27, 2011 with a diagnosis of Major depressive disorder; generalized anxiety disorder; Cluster B traits, possibly borderline; and a GAF of 55-60.

On August 30, 2011, Claimant saw his primary care physician for a recheck of his anxiety disorder. The anxiety disorder has been occurring for years. The course has been gradually improving with Ativan. The anxiety disorder is described as apprehension, expectant dread, nervousness, extreme fear and panic. The anxiety disorder is relieved by Ativan and Celexa. He was out of Ativan for 2 days and his anxiety got real bad. His anxiety/depression is under great control when he has his medication. He is doing well with the medications.

On February 17, 2012, Claimant was admitted to [REDACTED] [REDACTED]. He was admitted to the [REDACTED] [REDACTED] [REDACTED] on February 19, 2012. On March 13, 2012, an initial intake assessment was completed at the [REDACTED] [REDACTED] [REDACTED]. He stated that he was prescribed Celexa and Ativan, however, he had not been taking his medications on a regular basis and then tried to make up for it by taking several Celexa's at once. He believes this is what caused his manic episode. He had been living with his 73-year-old mother, however, she had left the home because she was afraid of him due to his bizarre behaviors. It was reported that Claimant had pushed his mother into a chair in an attempt to cast out her demons. He also told her that he saw God around her and this meant she was ready to go to heaven. His psychomotor speed was comprised of excessive fidgeting. He became agitated when asked to sign financial paperwork and started rocking back and forth. He was compliant, his posture was relaxed and he had good eye contact. His decision-making and coping ability was poor. He has several religious preoccupations and when he was admitted he believed that he was the "holy ghost" and that he could heal people. Diagnosis: Axis I: Bipolar disorder, manic, severe with psychosis; Axis V: Current GAF=30. Due to his emotional instability and his environmental needs, he is being referred to ACT services.

On March 20, 2012, Claimant underwent a psychiatric evaluation at [REDACTED] [REDACTED] [REDACTED] ([REDACTED]). He was recently discharged from [REDACTED] [REDACTED] where he was hospitalized in the [REDACTED] [REDACTED] [REDACTED]. He was

discharged on March 19, 2012. He was admitted after driving on the wrong side of the road and noted to be very manic in his behaviors. He was speaking rapidly in a pressured fashion. He had many religious delusions and was dressed inappropriately for the weather, dressed with only shorts and flip-flops and a light t-shirt. He was admitted on an involuntary basis to the [REDACTED] [REDACTED] [REDACTED] [REDACTED]. At the evaluation, Claimant was dressed appropriately for the season and setting. He was not displaying any abnormal mannerisms or movements. He displayed good eye contact and affect appropriate to content throughout the conversation. His speech was logical and goal directed. He did not display any abnormality of thought form or content. No evidence of psychosis. He was oriented in all spheres. Memory was intact. Judgment was improving. He denied hopelessness or suicidality. He denied thoughts of wanting to harm others. Diagnosis: Axis I: Bipolar disorder; Axis II: Diagnosis deferred; Axis III: None contributing to Axis I; Axis IV: Occupational problems; recent loss of job; housing problems; homelessness; economic problems; inadequate finances; Axis V: GAF=55. Baseline=62.

On April 18, 2012, Claimant met with his therapist at [REDACTED] [REDACTED]. Claimant reported good control over his symptoms. He denies suicidal ideation or delusional thinking. He was reminded that he ended up in the hospital after he took Celexa at an excessive dose of three tablets per day and was manic for approximately 3 months. He takes his medication consistently as prescribed. He complains of sedation and drowsiness. However, he states that he cannot sleep if he does not have his Ativan every night. He does not display tardive dyskinesia or EPS. He complains of a side effect of weight gain of 40 pounds within the last three months since he has been on Risperal. He is casually dressed and well-groomed. His psychomotor activity is within normal limits, but slightly decreased. His eye contact is with a staring gaze at times. His speech is monotone and in short sentences, but he provides reasonable answers. He does not display delusional thinking. He denies auditory hallucinations. He denies suicidal or homicidal ideation. His mood is described as calm, though somewhat sedated and worried that he might feel depressed in the near future. Affect is restricted and calm. He is alert and oriented to time, place and person. His insight and judgment are fair.

On July 13, 2012, a psychosocial assessment was completed by community mental health. Claimant stated he had been receiving mental health services the last 3-4 months in Shiawassee County and was under a court order to continue. Claimant described a severe manic episode in February, 2012, where he was petitioned to [REDACTED] [REDACTED]. He reports he was on a 60/90 day court order and received ACT services in Shiawassee County. This order was recently extended. Claimant noted he had poor concentration, relentlessness, sleep disturbance and tension. He noted the intensity was moderate and chronically acute. He also expressed anhedonia, psychomotor retardation, weight gain, grandiosity, decreased sleep, pressured speech and racing thoughts. Claimant had no known suicide attempts and was under financial stressors. Claimant appeared subdued from medication. He reports he has gained a significant amount of weight and would like to see a psychiatrist for a medication adjustment. He was oriented and appeared to have average intelligence. His thought content was relevant and his behavior appropriate. He affect was flat. His judgment and reasoning were within normal limits. Diagnosis: Axis I: Bipolar disorder; Alcohol

abuse in remission; Axis II: No diagnosis exists; Axis III: No diagnosis exists; Axis IV: Economic problems; Problems accessing healthcare; Problem related to interaction with legal system; Axis V: GAF=45.

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 bipolar disorder. However, based on the current lack of objective medical evidence that the alleged impairment is 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/Retro-MA and SDA 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: November 1, 2012

Date Mailed: November 1, 2012

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.

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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.

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