

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-71704
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 28, 2012
County: Macomb-36

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 November 28, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included 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 March 1, 2013, 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-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 11, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On August 6, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P, indicating that Claimant had a non-exertional impairment and is physically capable of performing other work, pursuant to 20 CFR 416.920(f). (Depart Ex. A, pp 1-2).

- (3) On August 10, 2012, the department sent out notice to Claimant that her application for Medicaid had been denied.
- (4) On August 15, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On October 4, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform unskilled work. SDA was denied due to lack of duration. (Depart Ex. B).
- (6) Claimant has a history of bipolar disorder, type 2 diabetes, right ear hearing loss, and hypothyroidism.
- (7) Claimant is a 50 year old woman whose birthday is [REDACTED] Claimant is 5'5" tall and weighs 228 lbs. Claimant graduated from a high school and is a certified nurse's assistant. She is currently working at less than substantial gainful activity as a certified nurse's assistant.
- (8) 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 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).

As an initial matter, this appeal concerns only MA/Retro-MA. Claimant was denied SDA for excess income.

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 but testified that she is currently working two jobs as a certified nurse's assistant. 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 416.920(a)(4)(ii); 20 CFR 416.920(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, type 2 diabetes, right ear hearing loss, and hypothyroidism.

On January 24, 2012, Claimant underwent an internal medicine examination on behalf of the [REDACTED] [REDACTED] [REDACTED]. Claimant was seen for disability due to diabetes mellitus, hearing problem, thyroid, back pain, and low blood pressure. Claimant was diagnosed years ago with diabetes. She has never been hospitalized or to an emergency department for control of diabetes or diabetic ketoacidosis or renal disease. She takes oral medication and checks her blood sugar each morning which usually averages 198. The morning of the exam it was 89. She does not have any signs of peripheral vascular disease. She has been diagnosed with an underactive thyroid for 14 years. She was just started on thyroid replacement pill from the very beginning. Her last check was in September, 2011, and they increased her levothyroxine to 88. She has had lower back pain for 10 years. The pain comes and goes. Straight leg raising was negative. She was ambulatory with a stable gait. She had no difficulty getting on and off the examination table. While standing she was able to bend down completely to touch the floor. The range of movement in her back was full. She has had a hearing problem since she was a child and began wearing a hearing aid in 1981. Both external auditory canals showed no swelling or discharge. She was able to engage in normal

conversation. She was also told by her doctor years ago that she has low blood pressure.

On June 19, 2012, Claimant presented to [REDACTED] ([REDACTED] for her annual assessment. Since January, 2012, she has been employed and provides in-home assistance such as cleaning, laundry, doing dishes, making beds, and chatting. She noted that some of her assignments were too hard for her to manage due to trouble organizing. Claimant has been fairly stable when she saw her psychiatrist every three months for a medication review. However, since her mother passed away two years ago, she has been struggling to maintain stability. She has trouble finding and managing full-time work. She is worried about the future and her finances, and she gets confused and has trouble accessing entitlements and other community resources. Her psychiatrist recommended an increase in the level of care and Claimant is requesting resumption of case management services, which will be helpful for providing support, monitoring for health and safety issues, and assistance with accessing community resources, entitlements and supports. Diagnosis: Axis I: Bipolar disorder, most recent episode manic, severe with psychosis; Axis III: Diabetes, Colitis, Thyroid Disorder, Psoriasis, Asthma; Axis V: GAF=40.

On June 25, 2012, Claimant saw her primary care physician presenting with bipolar disorder. Her symptoms included distractibility, racing thoughts, agitation, fatigue, and poor concentration. She requested to see her doctor to talk to him about the paperwork for disability and Medicaid because of her bipolar disorder. Claimant's physician indicated her affect was flat, her speech was slow and her thought content and perception was normal.

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 she has bipolar disorder and diabetes. 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.

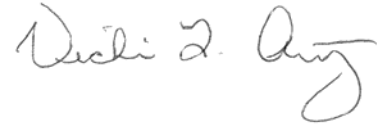
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 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 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 benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



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

Date Signed: March 21, 2013

Date Mailed: March 21, 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

2012-71704/VLA

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cc:

