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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-25212
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: April 24, 2013
County: Ingham

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 April 24, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Lead Worker [redacted] [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)?

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 July 12, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.

(2) On January 4, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA and SDA. (Dept Ex. A, pp 1-2).

(3) On January 14, 2013, the department sent out notice to Claimant that his application for Medicaid had been denied.

(4) On January 23, 2013, Claimant filed a request for a hearing to contest the department's negative action.

(5) On March 8, 2013, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform a wide range of unskilled work. SDA was denied because the nature and severity of Claimant's impairments would not preclude work activity at the stated level for 90 days. (Depart Ex. B, pp 1-2).

(6) Claimant has a history of depression, substance abuse, and anxiety.

(7) Claimant is a 46 year old man whose birthday is [redacted]. Claimant is 5'7" tall and weighs 155 lbs. Claimant completed high school and has a two year college degree. He has not worked since December, 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 CRF 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 CF R 945(a)(1). An ind ividual's residual functional capacity assessment is eval uated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an i ndividual's functional capac ity to perform basic work activities is evaluated and if found that the individ ual h as the ability to perform basic work activities with out significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the indi vidual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impairment or combi nation of impairments is not severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a). The in dividual ha s the resp onsibility t o provide evidence of prior work experience; e fforts 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 i ndividual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and testified that he has not worked since December, 2011. T herefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individ ual's alleged impairment(s) i s consider ed under Step 2. The individual bears the burden to present suffi cient objective medical evidenc e to substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or co mbination of impairments, is severe if it signific antly limits an in dividual's p hysical or mental ability to do basic wo rk activities regardless of age, education and work exper ience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessar y to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walk ing, 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 di sability claim obviously lacking in medical merit. *Higgs v Bowe n,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still b e em ployed as an admin istrative convenience to screen o ut 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 depression, substance abuse, and anxiety.

On January 23, 2011, Claimant was brought into the emergency department by the police. He was cuffed to a bed and hitting himself in the head. Claimant appeared to have altered thought processes, verbalized as flights of ideas, loose associations and obsessive-compulsive ideation. He appeared anxious, restless, agitated, frustrated, angry, and hostile. He expressed constant homicidal thoughts and had a specific plan. He had a negative unenhanced CT examination of the cervical spine and brain. A CT maxillofacial without contrast showed a blowout fracture involving the floor of the left orbit. Claimant was transferred to [redacted] once he was sober.

On March 19, 2011, Claimant had been drinking and called 911 to leave them a message that he was going to kill his neighbor. The police picked up Claimant and brought him to the emergency department. They indicated that they are dispatched every couple of months to Claimant's house. Claimant appeared well-nourished and unkempt and smelled of alcohol. Claimant's x-rays showed a small fracture of the left side of the nasal bone and evidence of an old blow out fracture of the left orbital floor. A CT head without contrast showed no acute intracranial hemorrhages. No mass, no fracture, and no traumatic processes. Claimant got out of bed and tried to sleep in a corner. He was advised he was safer on the bed. He replied he was safer in the corner. Claimant was diagnosed with a head injury, alcohol intoxication, contusions to the face, nasal fracture, homicidal statements, and facial contusions. Claimant was transported to [redacted] on 3/20/11.

On March 26, 2011, Claimant called the police and reported being assaulted. Claimant arrived at the emergency department by ambulance. His preliminary breath test (PBT) was .374. Later Claimant became violent and wanted to fight staff. The police were called.

On April 5, 2011, Claimant was brought by ambulance from [redacted] to the emergency department with suicidal ideation. He was anxious, depressed and having suicidal thoughts. He stated he was thinking of injecting himself with syringes full of bleach. He has been depressed and had suicidal thoughts. His symptoms were moderate. He was diagnosed with moderate depression, alcohol intoxication alcohol abuse (chronic alcoholism), and suicidal ideation. He was cleared for acute psychiatric hospitalization. His blood alcohol level remained elevated. The plan was to transfer Claimant to [redacted] when his level reached .12.

On April 6, 2011, while at [redacted] Claimant admitted he is an alcoholic and wanted to seek treatment. He has a long history of alcoholism with substance abuse services 6 times at [redacted] between 1998 and 2003. He has a history of arrests for alcohol related charges. He also has a history of 4 known psychiatric hospitalizations between 1998 and 2001. The records indicated that his blood alcohol level has been as high as .5. It was .315 at the emergency department the night before. Claimant stated he has been drinking since November, 2010, after a long period of sobriety. He reported he was drunk last night and said he wanted to kill himself but he is not suicidal now that he is sober. He was alert, cooperative, polite, oriented, speech normal rate; thoughts logical and connected, with no indication of psychosis. Judgment good and now has insight to drinking problem.

On April 11, 2011, the police brought Claimant to the emergency department. Claimant was non-compliant with his medication and was threatening to kill everyone at his apartment complex and burn the place down. He was oriented X3. His speech was repetitive and his mood/affect appeared flat. He appeared agitated and unkempt. Claimant expressed suicidal and homicidal thoughts and seemed unconcerned about his current condition. Claimant was transferred to [redacted] when his blood alcohol level reached .12.

On October 4, 2011, Claimant was brought to the emergency department by the police. He was diagnosed with alcohol intoxication and suicidal ideation. His mood was depressed. His anxiety was severe from work. He also had chronic depression and had drank a lot of alcohol that day. He used to be on Zoloft but is not currently taking any psychotropic drugs. PBT was a .38. He was transferred to [redacted]

On October 23, 2011, Claimant was brought to the emergency department by the police. Claimant stated he does not see a reason to live any more. Claimant was oriented X4. He appeared disoriented and an abnormal gait. His mood/affect appeared flat. He had poor eye contact. He was disheveled, uncooperative and lethargic. While the physician was at Claimant's bedside, Claimant attempted to kick the physician and was put in 4-point restraints. He was diagnosed with moderate depression and alcohol intoxication. Claimant was transferred to [redacted] on 10/24/11.

On December 10, 2011, Claimant arrived at the emergency department escorted by the police. Clamant smelled of alcohol. Claimant was uncooperative, stating, "piss off," in response to questions. Police informed the ER personnel that Claimant left a note stating that he was dead and to call the police. Claimant was alert and oriented x4. His speech was within normal limits. His mood/affect appeared angry and hostile. He had poor eye contact and appeared to have an altered thought process and described suicidal thoughts. He appeared agitated and was verbally threatening and combative. He kicked the wall behind his bed and staff. He did not appear to understand his illness or feel treatment was necessary. EKG was unchanged when compared to prior EKG of 6/20/2000. He was involuntarily committed to [redacted]

On March 30, 2012, Claimant was brought to the emergency department after threatening to hang himself. PBT was .289. Claimant was intoxicated and in severe distress. He was uncooperative (unblinking stare). He appeared unkempt and older than his stated age. His mood was depressed and anxious. His affect was dysphoric. He was hopeless and helpless. His insight was poor, but his judgment was within normal limits. Claimant was assessed to be a moderate suicidal risk and he was to be re-evaluated when sober. When he woke up on 3/31/12, Claimant was asked if he still wanted to harm himself. Claimant stated, "not right now, but I know if I go home I'll feel lonely and feel like I want to again." Claimant's care was transferred to [redacted] He was diagnosed with depression and alcohol intoxication.

On July 5, 2012, Claimant was admitted to the psychiatric hospital with major depression with suicidal ideation. He had filled a bathtub and called the police stating he was going to kill himself. Blood alcohol was .325. He was cooperative with good eye contact. His speech was somewhat of a monotone. His mood was depressed with a very flat affect. He still had suicidal thoughts but no active plan to harm himself. His thought process was logical and coherent. No delusions. He was alert and oriented x4. His insight and judgment were limited. Diagnosis: Axis I: Major depressive disorder, recurrent, severe; Alcohol dependence; Axis III: History of hypertension; Axis IV: Poor social support, financial problems, unemployed; Axis V: GAF =25. Claimant was transferred to [redacted] where he was evaluated and found to meet continuing treatment criteria.

On July 5, 2012, Claimant was transferred to an in-patient psychiatric hospital. He acknowledged ongoing suicidal ideation/intent. He expressed themes of helplessness and hopelessness. He expressed little in the way of future orientation, stating that he would find some way to end his lift if he were to return home presently. He has a history of suicidality, particularly when drinking. He has an alcohol dependence problem, and has been drinking heavily the past two weeks. Treatment goals were to ensure his safety, stabilize his mental status, assess for medication management, suicide awareness counseling and appropriate discharge planning. He was discharged on 7/18/12.

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 depression, substance abuse, and anxiety. He also testified that he stopped drinking on 7/4/12, which was the last time he went to the emergency room intoxicated, after trying to kill himself by electrocution in the bathtub. That ER visit was followed by two weeks in a psychiatric hospital. Due to the lack of ER visits since 7/4/12, it appears Claimant has stopped drinking. And from the medical records, all of his suicide attempts were alcohol related. Without alcohol intoxication, there is no evidence Claimant is suicidal. Therefore, 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, Retro-MA, and SDA 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: May 14, 2013

Date Mailed: May 15, 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

VLA/las

cc: [redacted]