

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

IN THE MATTER OF:



Reg. No.: 2013-2982
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: February 12, 2013
County: Wayne-41

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 February 12, 2013, 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 June 12, 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), Retroactive Medical Assistance (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 1, 2012, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On April 26, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating Claimant was capable of performing other work. (Depart Ex. A, pp 4-5).

- (3) On May 1, 2012, the department sent out notice to Claimant that her application for Medicaid had been denied.
- (4) On October 3, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On November 14, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits. SDA was denied because the nature and severity of Claimant's impairments would not preclude work activity for 90 days. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of damaged nerves in legs, asthma, chronic obstructive pulmonary disease (COPD), emphysema, bronchitis and bipolar disorder.
- (7) Claimant is a 46 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 162 lbs. Claimant completed the tenth grade and cannot remember when she last worked.
- (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 manual s. 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 that she does not remember the last time she worked. 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 damaged nerves in legs, asthma, chronic obstructive pulmonary disease (COPD), emphysema, bronchitis and bipolar disorder.

On January 4, 2011, Claimant's pulmonary function test showed an FVC of 2.06 and an FEV1 of 2.08.

On December 8, 2011, Claimant underwent an initial psychiatric evaluation at [REDACTED]. Claimant stated she had been off her medications for the past 5 months because she could not make it to her former clinic. Claimant stated the voices had returned and she was having violent thoughts. She stated she did much better when she was taking medication. She stated she had a problem with crack and alcohol but denied using in almost a year. She had been in treatment 4 times for substance abuse. She stated she has multiple personalities and that she has blackouts. She becomes violent at times but has memory of the events. She names the personalities and stated the episodes were unrelated to alcohol or drugs. The examining psychiatrist noted that Claimant did not appear to respond to internal stimuli. Her thought processes were logical and organized. Her mood appeared euthymic and her affect was appropriate to mood. She denied suicidal or homicidal ideations. She was fully oriented and her memory was intact. She had limited insight and fair judgment. Diagnosis: Axis I: Bipolar disorder, most recent episode manic; Dissociative identity disorder; Cocaine abuse; Axis III: Pain on right side, dental needs due to missing teeth; Axis V: GAF=51. Prognosis was guarded.

On December 12, 2011, a social worker from [REDACTED] completed a Mental Residual Functional Capacity Assessment of Claimant. Accordingly, Claimant was markedly limited in her ability to understand and remember detailed instructions, carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; work in coordination with or proximity to others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace

without an unreasonable number and length of rest periods; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; respond appropriately to change in the work setting; and to set realistic goals or make plans independently of others.

On February 21, 2012, Claimant was evaluated by her treating physician. Claimant was diagnosed with exacerbation of COPD, dissociative personality and bipolar disorder, mania. She had decreased breathing sounds with fine wheezing. Claimant's physician opined that her condition was deteriorating.

On May 31, 2012, Claimant underwent an independent medical evaluation on behalf of the department. Claimant alleged disability based on emphysema, asthma, bipolar disorder, bronchial spasms and poor vision. Claimant stated she has had asthma since childhood. She has daily symptoms and uses an albuterol inhaler and nebulizer for relief of symptoms. She was diagnosed with bipolar disorder last year and currently sees mental health once a month. She has had no previous psychiatric treatment. She has paresthesias in both hands, right more than left. She stood without difficulty and was able to get on and off the exam table without difficulty. She was able to go up and down stairs in the office without difficulty and ambulated with a steady unassisted gait. The examining physician opined Claimant had suboptimal control of her asthma and COPD and continued to smoke and should avoid dust, fumes, smoke and extremes in temperature. Claimant's pulmonary function report indicated it should be interpreted with care due to the poor test quality. Her FVC was 2.86 and her FEV1 was 2.13.

On August 23, 2012, Claimant was admitted to the hospital with acute abdominal pain, colitis, inflammatory versus infectious, intractable nausea and vomiting. CT of the abdomen and pelvis showed focal area of edematous and inflamed proximal small bowels with inflamed mesentery and fibroid uterus. On 8/27/12, Claimant was discharged and instructed to continue home medications and take over the counter pain medication.

On December 22, 2012, Claimant underwent a mental status examination by the [REDACTED]. She alleged disability due to bipolar disorder, asthma and COPD. During the evaluation, she claimed that she experienced auditory hallucinations for the past year. She indicated that she has violent thoughts and hears a voice that says, "get 'em and do it." She also reported that she sees "images and shadows moving." None of these symptoms were present during the interview. Claimant's speech was spontaneous and clear and she appeared able to express herself without difficulty. She was hyperactive and inattentive during the evaluation. She had difficulty sitting still and maintained poor eye contact throughout the interview. Her concentration was poor. She was inattentive and had difficulty concentrating on tasks. Questions had to be repeated in order to get her to produce an answer. Major problems were observed with immediate recall, recent and remote memory. Diagnosis: Axis I: Bipolar Disorder; Axis IV: Occupational problems, problems with primary support group, economic problems; Axis V: GAF=55. The examining psychologist opined that Claimant's fund of general information, short and long-term memory, judgment,

attention and concentration, abstract thinking, and ability to perform simple mental arithmetic are all moderately impaired. She is impulsive and likely to have difficulty performing work that requires following even simple verbal or written instructions. Her mood symptoms do not appear to be well controlled at this time. Her ability to work will also be impacted by any physical limitations. In addition, she is likely to be unable to manage any benefit funds.

On February 5, 2013, Claimant's psychiatrist wrote that Claimant has a mental health diagnosis that leads to functional impairment. She continues to experience mental health symptoms that affect her ability to perform daily tasks. It is necessary for her to continue participating in therapy and medication management in an effort to maintain mental wellness.

On April 12, 2013, Claimant underwent an independent medical examination. Claimant was diagnosed with back pain, COPD and an anxiety. The examining physician opined Claimant's condition was stable and she was limited to occasionally lifting no more than 10 pounds and walking and sitting no more than 2 hours in an 8-hour work day. She was also limited regarding sustained concentration. The physician noted that Claimant was able to meet her needs in the home.

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 she does have some physical and mental limitations on her 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 damaged nerves in legs, asthma, chronic obstructive pulmonary disease (COPD), emphysema, bronchitis and bipolar disorder.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory 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). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within

the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

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 work occupations. Accordingly, Step 5 of the sequential analysis is required.

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, Claimant was 46 years old and was, thus, considered to be a younger individual. Claimant has a tenth grade education. 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 damaged nerves in legs, asthma, chronic obstructive pulmonary disease (COPD), emphysema, bronchitis and bipolar disorder. The objective medical evidence notes limitations in standing and/or walking and lifting and carrying. 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(a). After review of the entire

record using the Medical-Vocational Guide lines [20 CFR 404, Subpart P, Appendix I] as a guide, specifically Rule 201.18 , it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

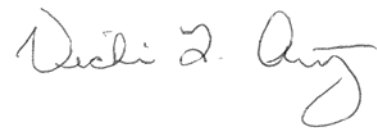
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 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 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: July 8, 2013

Date Mailed: July 9, 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:

