

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-9281
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: February 14, 2013
Huron County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on February 14, 2013. Although claimant was represented by attorney [REDACTED], [REDACTED] sent a letter to this Administrative Law Judge dated February 5, 2013, indicating that he would not be appearing at the hearing. The claimant appeared and provided testimony, along with his caretaker, [REDACTED]. The department witnesses were [REDACTED] and [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 April 5, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance (MA) and State Disability Assistance (SDA) application?

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 August 29, 2012, claimant applied for MA and SDA with the Michigan Department of Human Services (DHS).
2. Claimant did not apply for retro MA.
3. On October 17, 2012, the MRT denied.
4. On October 17, 2012, the DHS issued notice.

5. On November 7, 2012, claimant filed a proper hearing request.
6. Claimant testified at the administrative hearing that he has an SSI appeal pending with the Social Security Administration (SSA).
7. On December 20, 2012, the State Hearing Review Team (SHRT) denied claimant. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on April 5, 2013 SHRT once again denied claimant.
8. As of the date of hearing, claimant was a 46-year-old male standing 5'11" tall and weighing 300+ pounds. Claimant has a high school education and some college.
9. Claimant testified that he does not smoke cigarettes, drink alcohol or use illegal drugs.
10. Claimant has a driver's license and testified that he can drive an automobile, but sometimes gets lost.
11. Claimant is not currently working. Claimant last worked in 2012 doing home care, which he did for 11 years. Claimant has also worked as a convenience store cashier.
12. Claimant alleges disability on the basis of leg problems and mental health problems.
13. Claimant has been diagnosed with major depressive disorder, recurrent, moderate. An assessment on June 6, 2012, found the claimant to have bland affect, improved attention, and impaired concentration. He continued to report sleep difficulty, he denied suicidal or homicidal ideation. He showed positive response to medication and his thoughts were organized and goal directed. Claimant reported that he hears voices at night and has mood swings. He reported that he can't work and has applied for SSI. Claimant reports he was hospitalized in 2010 for suicidal ideation.
14. Claimant has been diagnosed with varicose veins in the right and left leg. Claimant is morbidly obese and a type II diabetic.
15. On May 17, 2012, the claimant underwent an evaluation for Disability Determination Services. Claimant reported that he hears voices and sees things that are not actually there. He reported that the voices tell him to rob a store or call someone to take care of his financial problems, but he fights the process. He also reported frequent mood changes. The

claimant was able to perform fine and gross manipulation. His grip strength was 5/5 bilaterally. The lower limbs, particularly on the left side, there were marked varicosities, with tortuosity and sacculation and relatively minor trophic changes on the distal part of both legs with hypertrophic pigmentation. There was no gross edema at that time. Pulses in both feet were normal. On both knee joints there were no gross deformities, but there was mild tenderness, particularly on the left side. He had mild difficulty squatting. His gait was guarded, but he was able to walk without assisting devices. His thought content and association are grossly normal. Claimant was diagnosed with morbid obesity, varicose veins in both lower limbs, probable degenerative disease in both knees and lumbar spine, a history of asthma, shizoaffective disorder, and diabetes mellitus.

16. An independent mental examination was conducted on June 5, 2012. The claimant reported that he was bipolar and schizophrenic. He indicated that he currently takes Zoloft and Xanax. The claimant presented with good hygiene and grooming. His interactions were positive and he was friendly, responsive and cooperative. His expressive language skills were good. His responses were spontaneous, clear, on target, of moderate depth and displayed no circumstantial or tangential tendencies. He reported that he is forgetful at times and relies on writing himself reminders. He reported that he occasionally hears voices telling him to do bad things and sees shadows of dead people. He had an appropriate affect, he was oriented x 3. He was diagnosed with bipolar disorder and assigned a GAF of 50. The clinician opined that the claimant's ability to understand, retain and follow simple instructions, and perform basic, routine, and tangible tasks is mildly impaired. His ability to interact with other outside the home, supervisors and the public appears to be moderately impaired.
17. On September 20, 2012, the claimant underwent an independent medical examination. Claimant complained of varicose veins, edema of the right foot, Baker's cysts on both legs and arthritic changes that make it difficult to walk. Claimant had full range of motion of the cervical spine. Claimant had equal grip in both hands. He had negative leg-raising signs, both sitting and supine. The lower extremities had large varicosities, especially the upper portions. There was edema, at least 4+ in each leg. The right foot was somewhat larger than the left due to the edema. He ambulated with a slow, waddling gait, favoring the left side. He did not require a walking aid. He was alert and aware of his surroundings. He had no restrictions grasping coins or using his upper extremities. He had marked restrictions in performing anything requiring extensive walking or lifting, which was due primarily to his obesity. Claimant mentioned that he was bipolar, paranoid and schizophrenic, but this was not apparent in the evaluation.

18. A new patient evaluation was conducted on October 21, 2012. During this evaluation, the claimant indicated he was not suicidal or homicidal. He reported he was only on the Zoloft, as he could not afford the Risperdal. Physical examination found trace lower edema. There was some reddening of the lower extremities over the shin. Claimant was alert and oriented x 3. He was anxious throughout the exam. His remote and recent memory were intact. Claimant was restarted on Metformin for his diabetes and given Motrin for the varicose vein pain. On December 11, 2012, the claimant was seen for leg pain and wondered if that would get him on disability. Upon examination claimant had some venous stasis discoloration as well as some varicose veins noted. He was tender to palpation with squeezing the calf, but no palpable cord was noted.
19. A December 11, 2012 ultrasound of the extremity found no evidence of deep vein thrombosis.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by 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 (DHS or department) 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 Program Reference 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 MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also known as Medicaid, which is a program designated to help public assistance

claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...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.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a)
Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that

an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily

living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

Applying the sequential analysis herein, claimant is not ineligible at the first step as claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in claimant's favor, this Administrative Law Judge (ALJ) finds that claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. 20 CFR 404.1520(e) and 416.920(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. 20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8.

Claimant's main physical impairment is obesity. It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug addiction and alcoholism. This removal reflects the view that there is a strong behavioral component to obesity. Thus, obesity in-and-of itself is not sufficient to show statutory disability. The claimant's varicose veins are strongly correlated with the claimant's obesity. If the claimant lost weight as his doctors have no doubt recommended, the varicose veins and swelling of the lower extremities would improve. Claimant is able to ambulate without any assistive device. There are no motor or sensory deficits. A May 17, 2012 physical evaluation found claimant was able to perform fine and gross manipulation. His grip

strength was 5/5 bilaterally. A September 20, 2012 medical examination found the claimant had no restrictions grasping coins or using his upper extremities.

Claimant claims mental disabilities of bipolar disorder or schizophrenia. Claimant reports a one-day hospitalization for suicidal ideation in 2010, but no records are in the file from that incident. Claimant reports no other psychiatric hospitalizations. Claimant reports that he hears voices and sometimes sees shadows. All evaluations contained in the file show he is not suicidal or homicidal. Mental status evaluations showed his thought content was organized or normal. All examinations showed him to be oriented x 3. An independent mental examination found his expressive language skills were good. His responses were spontaneous, clear, on target, of moderate depth and displayed no circumstantial or tangential tendencies.

Claimant's complaints and allegations concerning impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental capacity to engage in simple and unskilled, sedentary work activities on a regular and continuing basis.

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f) and 416.920(f). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. 20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965. If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, this ALJ finds that claimant most likely would not be able to return to past relevant work. The claimant would not be able to return to work as a home health aide as the Dictionary of Occupational Titles defines this as medium work. Therefore, the analysis will continue.

At the last step of the sequential evaluation process, the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. 20 CFR 404.1520(g) and 416.920(g).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform simple and unskilled sedentary work if demanded of him. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant had no residual functional capacity to perform other work.

Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he could not perform sedentary work. Under the Medical-Vocational guidelines, a younger individual (age 46), with a high school education or more and an unskilled/semi-skilled work history who can perform sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.21.

The 6th Circuit has held that subjective complaints are inadequate to establish disability when the objective evidence fails to establish the existence of severity of the alleged pain. *McCormick v Secretary of Health and Human Services*, 861 F2d 998, 1003 (6th cir 1988).

As noted above, claimant has the burden of proof pursuant to 20 CFR 416.912(c). Federal and state law is quite specific with regards to the type of evidence sufficient to show statutory disability. 20 CFR 416.913. This authority requires sufficient medical evidence to substantiate and corroborate statutory disability as it is defined under federal and state law. 20 CFR 416.913(b), .913(d), and .913(e); BEM 260. These medical findings must be corroborated by medical tests, labs, and other corroborating medical evidence that substantiates disability. 20 CFR 416.927, .928. Moreover, complaints and symptoms of pain must be corroborated pursuant to 20 CFR 416.929(a), .929(c)(4), and .945(e). Claimant's medical evidence in this case, taken as a whole, simply does not rise to statutory disability by meeting these federal and state requirements. 20 CFR 416.920; BEM 260, 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is **UPHELD**.

Suzanne
Administrative

/s/ _____
L. Morris
Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 12, 2013

Date Mailed: July 12, 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

SLM/hj

cc:

