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

IN THE MATTER OF:



Reg. No.: 2013-36277 Issue No.: 2009; 4031

Case No.: Hearing Date:

County:

August 6, 2013 Genesee-02

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Ad ministrative Law Judge upon Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a nd appeal process. After due notice, a telephone hearing was commenced on August 6, 2013, from Lansing, Michigan. Claimant personally a ppeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist

ISSUE

Whether the Department of Human Serv ices (the department) properly denied Claimant's application for Medical Ass istance (MA-P), Retro-MA and State Dis ability 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 November 14, 2012, Claimant f iled an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On February 7, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P, Retro-MA and SDA. (Depart Ex. A, pp 1-2).
- (3) On February 20, 2013, the department casework er sent Claimant notice that his application was denied.
- (4) On March 14, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 10, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform unskilled work. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of anxiety, depression, schizophrenia, posttraumatic stress disorder, metal plate in his left leg, and right foot nerve damage from a gunshot wound.
- (7) On August 6, 2013, the department presented a copy of the Medical Review Team's decis ion dated June 25, 2013, approving Claimant for Medicaid and Retro-MA beginning January, 2013. (Depart Ex. C).
- (8) On October 30, 2012, during a psychosocial assess ment, the therapist indicated that Claimant had homicidal ideations and had purchased a gun. Claimant was intoxicated and in possession of the gun whe n stopped by the police for being intoxicated. (Depart Ex. A, p 59).
- (9) On December 5, 2 012, Claim ant underwent a psychiatric evaluation. Diagnoses: Axis I: Major Depressive Disorder, recurrent, severe with psychosis; Dysthymic Disorder; Psyc hotic Dis order; Schizoaffective Disorder; Antisocial personality diso rder; Alcohol De pendence; Axis V: GAF=30. The psychiatrist opined t hat Claimant needed to continue CRU to provide a structured protected safe environment for him to improve psychosis, depressio n, mood swings and for further stabiliz ation on medications. (Depart Ex. A, pp 50-51).
- (10) Claimant is a 35 year old man whose birthday is is 5'11" tall and weighs 190 lbs. Claimant completed a high school equivalent education through special education.
- (11) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

As a preliminary matter, the department has approved Claimant for MA, Retro-MA and SDA beginning January, 2013. Therefore, the only issue is whether Claimant is eligible for MA, Retro-MA and SDA from August, 2012 to January, 2013.

The Medic al Assistance (MA) program is est ablished by the Title XIX of the Socia I Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independ ence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MC L 400.105. Department polic ies are found in the Bri dges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s

(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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

... the inability to do any subs tantial gainful activ ity by reason of any medically dete rminable physical or mental impairment which c an be expect ed to result in death or which has lasted or can be expect ted to last for a continuous period of not less than 12 months. 20 CFR 416.905

The SDA program differs from the feder al MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The person claiming a physica I 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, di agnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CF R 416.913. An individual's subjective pain complaints are not, in and of the mselves, sufficient to estab lish disability. 20 CFR 416.908 a nd 20 CF R 416.929. By the same token, a conclus ory statement by a physici an or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to deter mine disability. Current work activity, severity of impairments, residual functional capacity, past wor k, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experienc e. 20 CFR 416.920(c).

If the impairment, or combination of impair ments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920. Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laborat ory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include -

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

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing bas ic work activities is evaluated. If an individual has the ability to perform basic work activities with out 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment ; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we class ify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. Sedentary work involves lifting no more

than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is def ined as one which involves sitting, a certain amount of wa lking and standing is often necess ary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walk ing or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg c ontrols. 20 CFR 416.967(b). Medium work involves lifting no more t han 50 pounds at a time wit h frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentar y and light work. 20 CFR 416. 967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying o f objects weighing up to 50 pounds. If som eone can do heavy work, we deter mine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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

When determining disability, the federal regula tions require that s everal considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is <u>not</u> required. These steps are:

- 1. Does the client perf orm Substantial Gainful Activit y (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
- 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 cli ent is ineligible for MA. If yes, the analys is c ontinues t o Step 3. 20 CF R 416.920(c).
- 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? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
- 4. Can the client do the fo rmer work that he/she performed within the last 15 year s? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

 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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #6-#10 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has show n, by clear and convincing documentary evidenc e and credible testimony, his mental impairments meet or equal Listing 12.04(A) and 12.04(B):

12.04 Affective disorders: Characterized by a distur bance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persist ence, either continuous or intermittent, of one of the following:
- 1. Depressive syndrome characterized by at least four of the following:
- a. Anhedonia or per vasive los s of intere st in a lmost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

- 2. Manic s yndrome characterized by at least three of the following:
- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking; or
- 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decomp ensation, each of extended duration;

Accordingly, this Ad ministrative Law Judg e concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his November 14, 2012, MA/Retro-MA/SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall proces s Claimant's November 14, 2012, MA/Retro-MA/SDA applic ation, and s hall award him all the benefits he

may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.

- 2. The department shall rev iew Claimant's medica I cond ition for improvement in August, 2014, unless hi s Socia I Sec urity Administration disability status is approved by that time.
- 3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.
- 4. In addition, due to Cla imant's mental impairment, Claimant cannot be responsible for his own funds.

It is SO ORDERED.

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

Date Signed: August 12, 2013

Date Mailed: August 13, 2013

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely 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:

