

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201348726
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: October 9, 2013
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on May 10, 2013. After due notice, a telephone hearing was held on October 9, 2013. The Claimant personally appeared and provided testimony. The Department was represented by [REDACTED].

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance (MA-P) based on disability?

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 January 11, 2013, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On April 11, 2013, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that the Claimant is capable of performing other work despite a non-exertional impairment.
3. On April 15, 2013, the Department sent the Claimant notice that it had denied the application for assistance.
4. On May 10, 2013, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On July 26, 2013, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of Medical Assistance (MA-P) benefits.
6. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
7. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application and the Claimant reported that a SSI appeal is pending.
8. The Claimant is a 42-year-old man whose birth date is [REDACTED].
9. Claimant is 5' 6" tall and weighs 182 pounds.
10. The Claimant attended school through the 12th grade, and participated in special education.
11. The Claimant is capable of reading and understanding English and performing basic math skills.
12. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
13. The Claimant has past relevant work experience working at a fast food restaurant where he was required to take food orders, prepare food, clean the restaurant, and supervise a crew of employees.
14. The Claimant alleges disability due to hypertension, neck and shoulder pain, problems focusing, and depression.
15. The objective medical evidence indicates that the Claimant has been diagnosed with hypertension, headache syndrome, and depression.
16. The objective medical evidence indicates that the results of a magnetic resonance imaging (MRI) scan revealed that the Claimant's brain appears normal with no evidence of acute infarction, mass, or recent hemorrhage.
17. The objective medical evidence indicates that the Claimant has been diagnosed with major depression.
18. The objective medical evidence indicates that the Claimant maintains personal hygiene, self-direction, activities of daily living, and interpersonal functions independently.
19. The objective medical evidence indicates that the Claimant is oriented with respect to person, place, and time.

20. The objective medical evidence indicates that the Claimant has been diagnosed with Schizoaffective disorder.
21. The objective medical evidence indicates that the Claimant was found to have serious symptoms and serious impairments in social and occupational functioning in September of 2012, and January of 2012.
22. The objective medical evidence indicates that the Claimant was found to have moderate symptoms and moderate difficulty in social and occupational functioning in June of 2012 and January of 2013.
23. The objective medical evidence indicates that the Claimant was found to have a verbal comprehension IQ of 61, a perceptual reasoning IQ of 65, a working memory IQ of 63, a processing speed IQ of 68, and a full scale IQ of 58 on the Wechsler Adult Intelligence Scale (WAIS-IV), which places him in the mentally retarded range of intellectual functioning.
24. The objective medical evidence indicates that attention deficit disorder (ADD) or Attention deficit hyperactivity disorder (ADHD) appear present, but it is likely that bipolar disorder dynamics are a better diagnostic indication of the Claimant's difficulties regarding focusing and concentration.
25. The objective medical evidence indicates that the Claimant has been diagnosed with bipolar disorder, anxiety disorder, and mild mental retardation.
26. The objective medical evidence indicates that an x-ray scan demonstrated no acute bone, joint, or soft tissue abnormalities.
27. The objective medical evidence indicates that the Claimant's heart is normal in size, his lungs are clear, mediastinal contour is normal, and no active process was found.
28. The objective medical evidence indicates that an x-ray scan of the Claimant's right humerus revealed no evidence of fracture or joint abnormality.
29. The objective medical evidence indicates that an x-ray scan of the Claimant's cervical spine revealed mild degenerative disk disease at the C5-6 level, but no abnormal motion on flexion or extension.
30. The objective medical evidence indicates that an x-ray scan of the Claimant's lumbar spine revealed no abnormalities.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (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 (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay

or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Claimant testified that he is working eight to nine hours per week at a rate of [REDACTED] per hour. Based on the Claimant's testimony, the Claimant receives monthly earned income in the gross monthly amount of [REDACTED]. The Claimant testified that his employer has made adjustments to the expectations of work performance expected from the Claimant based on his impairments.

The Claimant testified that he is currently doing work type activity, but there is not sufficient evidence on the record to establish that Claimant is engaged in substantial gainful activity as defined in 20 CFR 416.971 through 416.975.

STEP 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 not disabled.

At step two, a determination is made whether the Claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921). If the Claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

The Claimant is a 42-year-old man that is 5' 6" tall and weighs 182 pounds. The Claimant alleges disability due to hypertension, neck and shoulder pain, problems focusing, and depression.

The objective medical evidence indicates the following:

The Claimant has been diagnosed with hypertension, headache syndrome, and depression.

A magnetic resonance imaging (MRI) scan revealed that the Claimant's brain appears normal with no evidence of acute infarction, mass, or recent hemorrhage.

The Claimant has been diagnosed with major depression. The Claimant maintains personal hygiene, self-direction, activities of daily living, and interpersonal functions independently. The Claimant is oriented with respect to person, place, and time. The Claimant has been diagnosed with Schizoaffective disorder. The Claimant was found to have serious symptoms and serious impairments in social and occupational functioning in September of 2012, and January of 2012. The Claimant was found to have moderate symptoms and moderate difficulty in social and occupational functioning in June of 2012 and January of 2013. The Claimant was found to have a verbal comprehension of 61, a perceptual reasoning IQ of 65, a working memory IQ of 63, a processing speed IQ of 68, and a full scale IQ of 58 on the Wechsler Adult Intelligence Scale (WAIS-IV), which places him in the mentally retarded range of intellectual functioning. Attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD) appear present, but it is likely that bipolar disorder dynamics are a better diagnostic indication of the Claimant's difficulties regarding focusing and concentration. The Claimant has been diagnosed with bipolar disorder, anxiety disorder, and mild mental retardation.

An x-ray scan demonstrated no acute bone, joint, or soft diffuse abnormalities. An x-ray scan of the Claimant's right humerus revealed no evidence of fracture or joint abnormality. An x-ray scan of the Claimant's cervical spine revealed mild degenerative disc disease at the C5-6 level, but no abnormal motion on flexion or extension. An x-ray scan of the Claimant's lumbar spine revealed no abnormalities.

The Claimant's heart is normal in size, his lungs are clear, mediastinal contour is normal, and no active process was found.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for twelve months.

STEP 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? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Claimant is disabled. If it does not, the analysis proceeds to the next step.

The Claimant's impairment failed to meet the listing for neck pain under section 1.04 Disorders of the spine because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for shoulder pain under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant's impairment involves a weight bearing joint resulting in inability to ambulate effectively, or an impairment of an upper extremity resulting in inability to perform fine and gross movements effectively.

Intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the development period. The objective medical evidence supports a finding that the Claimant meets a listing under section 12.05 Intellectual disability because on February 3, 2012, the Claimant was evaluated and found to have a full scale IQ of 58 on the Wechsler Adult Intelligence Scale (WAIS-IV).

Therefore, the vocational guidelines are not applicable in this case, and the Claimant meets the MA-P and SDA disability standard because his impairments are of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant meets the disability standard for Medical Assistance (M.A.) and State Disability Assistance (SDA) benefits.

Accordingly, the Department is **ORDERED** to initiate a review of the January 11, 2013, application for assistance to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of the determination in writing.

It is further **ORDERED** that the department shall medically review claimant's eligibility for Medical Assistance (M.A.) and State Disability Assistance (SDA) benefits in twelve months from the date this Decision and Order is mailed.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/22/2013

Date Mailed: 10/22/2013

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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

KS/sw

cc:

