

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-57042
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 30, 2013
County: Genesee-06

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge, pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10, upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on October 30, 2013, from Lansing, Michigan. Participants on behalf of the Claimant included the Claimant, and [REDACTED] [REDACTED] (Authorized Hearing Representative from [REDACTED]). Participants on behalf of the Department included [REDACTED] [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly deny Claimant's disability Medical Assistance, and Retroactive Medical Assistance applications?

FINDINGS OF FACT

1. Claimant's AHR applied for MA-P on May 15, 2012, with a request for retroactive coverage back to February, 2012.
2. The Medical Review Team denied the application on July 20, 2012.
3. On July 27, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's MA disability.
4. Claimant filed a request for hearing on August 15, 2012, regarding the MA denial.
5. On July 19, 2013, the State Hearing Review Team (SHRT) denied the application.
6. A telephone hearing was held on October 30, 2013.
7. Claimant alleges disabling physical impairments due to spondylosis and an irregular heartbeat.

8. Claimant alleges the following disabling mental impairments: depression, mood disorder and bipolar disorder.
9. Claimant is 5'9" tall and weighs 140 pounds.
10. Claimant is 51 years of age with a high school education.
11. Claimant testified that the only work he has done since the 1980s consisted of "odd jobs" such as landscaping and yard work.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Tables (RFT).

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 416.913. 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 (i.e. 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 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 three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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).

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). An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not working therefore is not involved in substantial gainful activity. Accordingly, Claimant is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. Claimant 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.

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 physical disability due to spondylosis and an irregular heartbeat. Claimant also alleges the following mental impairments: depression, mood disorder and bipolar disorder. During the hearing, the Administrative Law Judge observed that Claimant was a poor historian and was very difficult to comprehend. His thoughts seemed to be scattered and he often would not (or could not) answer the Administrative Law Judge's questions.

Claimant's objective medical records show repeated occurrences of treatment for alcoholism and alcohol intoxication. Claimant's medical records were voluminous and are summarized below.

On October 14, 2011, Claimant visited the emergency room complaining of abdominal pain, nausea, and vomiting for the past 4 days. He was admitted and diagnosed with acute alcoholic pancreatitis. Claimant was discharged on October 24, 2011.

On November 14, 2011, Claimant had a psychological assessment which indicated he had depressive disorder NOS (Axis I) and alcohol dependence and a GAF of 58.

On December 1, 2011, Claimant had a medical evaluation demonstrated that his musculoskeletal examination was within normal limits. For instance, there was no evidence of joint laxity, crepitation or effusion. His grip strength was intact and his dexterity was not impaired. Claimant was able to pick up a coin, button his clothing and open a door. He had no difficulty getting on and off the examination table. He demonstrated normal range of motion for all areas including his cervical spine, dorsolumbar spine, shoulders, elbows, hip, ankles, knees and wrists. He also had normal range of motion for his hands. The examining physician did note that Claimant had some soft tissue damage in the mid thoracic spine area but it was stable from an orthopedic standpoint. It was found that Claimant's symptoms appear to be due to lack of activity and range of motion exercises was recommended.

Claimant visited the emergency room again on February 5, 2012 complaining of abdominal pain with vomiting, chills and fever. Emergency room physicians diagnosed Claimant with acute alcoholic pancreatitis and alcoholic intoxication. He was discharged from the hospital on February 8, 2012.

On May 15, 2012, Claimant was admitted to the hospital after he was reportedly assaulted by being stabbed and then struck with a golf club. He had a comminuted right humerus fracture. Orthopedic physicians performed an open right internal fixation of the right humerus. He was given a splint and discharged with home care. Due to his atrial fibrillation, Claimant was given Cardizem drip; which controlled his problems.

Claimant went to the ER on July 10, 2012 complaining of pain and shortness of breath after he was apparently punched in the chest. Doctors felt that Claimant's chest pain was due to the trauma. They also believed that Claimant is at a high risk of falls due to his alcohol abuse. He was discharged with instructions to attend the local alcoholic anonymous group.

On July 31, 2012, Claimant visited the hospital with reported chest pain that started 1 week ago. According to the records, Claimant reported that he fell and hit his left chest region. Medical providers reported that Claimant "smells of alcohol." The hospital records noted, "[w]hen questioned, he denies a fall and states he is having chest pain because he hasn't taken his medicines in over 2 weeks. He states he has pain even if he walks around the block. He denies alcohol intake today but smells of etoh." The pain was worse after he fell and radiated to his neck. The pain was worse with deep breathing and movement. The record noted that Claimant had not been taking his medications at the time. He was given Cardizem. Claimant stated that his last alcoholic drink was the previous day.

The records also confirmed that Claimant had an irregular heart rate (atrial flutter with variable block), but that the rate was controlled.

On July 31, 2012, Claimant's heart rate was controlled, but it was noted that "patient is at risk of frequent falls from alcoholism and intoxication, so not a good candidate for anticoagulation even with higher CHADS2 score."

Chest x-rays taken at this time showed clear lungs and normal heart. He had healed rib fractures that were seen on the right.

On August 2, 2012, Claimant underwent a Persantine Spect which showed no perfusion defects, but a decreased ejection fraction of 39%.

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 medical evidence establishing that he does have physical limitations on his 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, or are expected to last, continuously for a period of twelve months or longer; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

The analysis proceeds to Step 3 where the medical evidence of Claimant's condition(s) are compared to the listings. Claimant alleges disabling physical impairments due to spondylosis and an irregular heartbeat. Claimant alleges the following disabling mental impairments: depression, mood disorder and bipolar disorder. In light of the medical evidence, listings 1.00 (musculoskeletal system), 4.00 (cardiovascular system), and 12.00 (mental disorders) are considered. There was evidence of spondylosis, depression and an irregular heartbeat. That being stated, the evidence shows that Claimant is able to ambulate without assistance and that he has full range of motion. With regard to listing 4.0, physicians indicated that Claimant's cardiac issues are controlled provided he takes his prescribed Cardizem. However, Claimant has not been compliant with this medication. There was no medical evidence presented to show that these problems continue despite following prescribed treatment. With regard to 12.00, Claimant's depressive symptoms are overshadowed by his alcohol dependency, which appears to be at the root of his problems. Ultimately, although the objective medical records establish physical impairments, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 3.

Ultimately, it is found that Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment and, therefore, Claimant cannot be found disabled at Step 3. Because Claimant does not have an impairment that meets or medically equals the criteria of the listings, he meets the Step 3 requirement.

Before Step 4, the Administrative Law Judge must determine Claimant's residual functional capacity to perform the requirements of his past relevant work. Here, Claimant did not provide a clear, coherent work history. Claimant vaguely testified that

he performed yard work and some limited landscaping. This Administrative Law Judge is unable to complete the analysis at Step 4 due to Claimant's failure to provide sufficient information.

At Step 5, this Administrative Law Judge must determine whether or not Claimant has the residual functional capacity to do any other work in the national economy considering his or her residual functional capacity, age, education, and work experience. At this point, the burden of proof shifts to the Department. Here, Claimant can perform a wide range of light or sedentary jobs despite his impairments. This Administrative Law Judge finds that the objective medical evidence on the record fails to show that Claimant has no residual functional capacity. Consequently, Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light to sedentary work even with his impairments.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a person closely approaching advanced age (age 51), who is a high school graduate with an unskilled work history that is transferrable who is capable of light work is not considered disabled pursuant to Vocational Rule 202.12.

Claimant has not satisfied the burden of proof to show by competent, material and substantial evidence that he has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the objective clinical documentation submitted by Claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate Claimant's assertion that his alleged impairment(s) are severe enough to reach the criteria and definition of disability. Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of alcohol abuse. Applicable law is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his alcohol abuse is material to his alleged impairment and alleged disability.

The Department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Claimant was not eligible to receive Medical Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it acted in compliance with Department policy when it denied Claimant's application for Medical Assistance.

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: November 27, 2013

Date Mailed: November 27, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/las

cc:

