

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-27581
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: Kent

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 May 8, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistance Payment Manager [REDACTED] [REDACTED] and 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 July 11, 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 the Medical Assistance (MA), Retroactive Medical Assistance (Retro-MA) and the State Disability Assistance (SDA) programs?

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 December 4, 2012, Claimant applied for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On January 9, 2013, the Medical Review Team (MRT) denied Claimant's MA/Retro-MA application indicating Claimant was capable of performing other work. SDA was denied due to lack of duration. (Depart Ex. A, pp 1-2).

- (3) On January 16, 2013, the department caseworker sent Claimant notice that his application was denied.
- (4) On January 24, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On April 10, 2013, the State Hearing Review Team (SHRT) upheld the denial indicating Claimant retained the capacity to perform light exertional tasks. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of depression, chronic kidney disease, hypertension and posttraumatic stress disorder.
- (7) Claimant does not have a driver's license because it has been suspended.
- (8) Claimant is a 52 year old man whose birthday is [REDACTED] Claimant is 5'10" tall and weighs 235 lbs. Claimant completed a high school equivalent education and last worked in June, 2012.
- (9) Claimant was appealing the denial of Social Security disability 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 he has not worked since June, 2012. Therefore, he 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 depression, chronic kidney disease, hypertension and posttraumatic stress disorder.

On August 18, 2012, Claimant presented to the emergency department complaining of fever, chills and myalgias. Initially, he was thought to have systemic inflammatory response syndrome, however the source of the infection was not clear. After hospitalization he was noted to have rhabdomyolysis with significantly elevated CPK which was treated with IV fluids. Also his kidney function deteriorated during the hospital course to the point where he required hemodialysis. During the subsequent hospital course, his rhabdomyolysis resolved, however, no clear etiology was identified. The other concern was his history of G6PD deficiency. On August 20, 2012, a complete retroperitoneal ultrasound was normal. Hematology/oncology was consulted and opined that he did not have any features of active hemolysis at present. He was discharged on September 13, 2012, with a diagnosis of rhabdomyolysis, acute tubular necrosis secondary to rhabdomyolysis requiring hemodialysis, currently off hemodialysis, pneumonia, uncontrolled hypertension and right arm superficial thrombus.

On October 18, 2012, Claimant followed up with his nephrologist after a recent pneumonia of 6-7 day duration with associated headaches, and a near syncopal event. He is an active smoker. His renal function has improved from 2.7 to the present 1.3mg/dl. He has no additional symptoms. His blood pressure is elevated today. A goal of 12-135/70-80 mmHg is desired. He is to return in 6 months.

On October 24, 2012, Claimant presented to the clinic to restart medication. He was last seen for psychotropic medication in July, 2011. Claimant stated he has been in the hospital for what is described as an acute Rhabdomyolysis. He could not remember the name of what he had. He was not on psychotropic medications when that happened. He had relapsed on alcohol and marijuana. He does not know if it was the alcohol, or the marijuana, or a strenuous interactive video game they were playing or just what led to the muscle breakdown. He said he had so much muscle protein in his blood stream that his temperature was 106-107 so they packed him in ice to get his temperature down. He also had temporary dialysis because his kidneys shut down. He states he is clean and sober now from all substances. He is not working due to the severity and complications of the Rhabdomyolysis. He thinks his issues with anger, impulse control and poor sleep have returned, although not as severe. He wants to get back on his medications before he loses control. Claimant was oriented to person, place, time and situation. His behavior and psychomotor behaviors were unremarkable. His speech was appropriate, his mood euthymic and his memory intact. His reasoning, impulse control, judgment and insight were fair. He denied hearing voices, except occasionally he thinks someone is calling his name but they are not. The psychiatrist opined that it sounded more like an anxiety disorder/P TSD symptoms versus a psychosis. Medication options were discussed. Remeron was prescribed to help with his anxiety,

depression/mood/anger and sleep. Diagnosis: Axis I: Bipolar disorder; Axis III : Hypertension (reported by Claimant), recent potentially fatal illness that required prolonged hospitalization; Axis IV: Moderate problems related to social environment; Axis V: Current GAF=60.

On December 19, 2012, Claimant had a nurse medication review. Claimant reported compliance with his only medication, Mirtrazepin. Claimant stated the only side effect was being "crazy." Mirtrazepin was started on 10/24/12, and prior to that he had not been prescribed psychotropics since July, 2011. Claimant stated he hears voices and talks to himself a lot. On presentation, his affect was even, his mood euthymic. He was very calm with a laid back demeanor, cordial and cooperative, logical, had reality oriented thought processes, brief responses with some spontaneous conversation and was in absolutely no state of distress. The treating nurse opined that his overall presentation was incongruent with his reported symptomology.

On February 7, 2013, Claimant presented at a clinic to establish care. He stated he left his previous primary care physician because they would not approve him for disability and told him he was able to work. Claimant has hypertension which he states began years ago. Comorbid conditions include chronic kidney disease which is currently stable. He was diagnosed with chronic kidney disease while hospitalized in October, 2012, with pneumonia and sepsis. He went through temporary dialysis. He now sees a nephrologist every 6 months. His last creatinine was 1.39 on 10/5/12. Claimant states he has a history of chest pain but only when his blood pressure is not controlled and upon exertion like shoveling snow or heavy lifting. The pain is relieved with rest and he has never seen a cardiologist. He also has a history of a mood disorder, depression and posttraumatic stress syndrome. He is not currently on any medication. Remeron was discontinued by his psychiatrist. He was alert and oriented with no evidence of anxiety or depression. His EKG was abnormal and he was referred to a cardiologist for a stress test and echocardiogram. He was instructed to keep his blood pressure under control to prevent further damage to the kidneys and to quit smoking. Claimant also underwent a Substance Brief Intervention and Referral to Treatment (SBIRT) Brief Screening. Claimant has a history of crack abuse. He quit in June, 2012. He also has a history of depression, anxiety and bipolar disorder. Claimant states he quit using crack after a health crisis in June, 2012. He spoke with a nurse during his hospitalization and realized that crack was killing him. He states he has been clean since being discharged from the hospital.

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 he does have some physical and mental 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 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 depression, chronic kidney disease, hypertension and posttraumatic stress disorder.

Listing 4.00 (cardiovascular system), Listing 6.00 (genitourinary impairments), 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, the Claimant was 52 years old and was, thus, considered to be an individual approaching advanced age for MA-P purposes. Claimant has a high school equivalent 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 Claimant to the Department to present proof that 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).

In this case, the evidence reveals that Claimant suffers from depression, chronic kidney disease, hypertension and posttraumatic stress disorder. The objective medical evidence notes no limitations. At the time of application, Claimant had not been prescribed psychotropics since July, 2011. During his psychiatric evaluation in October,

2012, he denied hearing voices, except for someone occasionally calling his name when no one was there. He was diagnosed with a GAF score of 60. A GAF of 60 is considered a mild mental disorder and generally is functioning pretty well, which is consistent with the psychiatrist's observations during the intake. Then in February, 2013, Claimant admitted to the treating physician that his chronic kidney disease was stable.

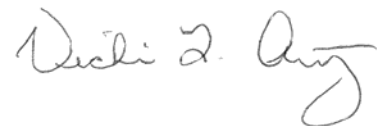
In light of the foregoing, it is found that Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(b). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.13, it is found that Claimant is not disabled for purposes of the MA-P program at Step 5.

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: August 5, 2013

Date Mailed: August 5, 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:

