

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-29102
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 16, 2013
County: Emmet

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 16, 2013, from Lansing, Michigan. Claimant, along with Mother and Godmother, personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [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 26, 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 Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA)?

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 October 3, 2012, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On December 7, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating Claimant was

capable of performing other work based on his non-exertional impairment. SDA was denied due to lack of duration. (Depart Ex. A, pp 149-150).

- (3) On January 29, 2013, the department caseworker sent Claimant notice that his application was denied.
- (4) On February 5, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On April 17, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Depart Ex. B).
- (6) Claimant has a history of respiratory distress, diabetes, psychotic disorder, social anxiety, depression, anxiety and mood disorder.
- (7) Claimant is a 29 year old man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 185 lbs. Claimant graduated high school and college.
- (8) Claimant was appealing the denial of Social Security disability benefits 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 MAC R 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 manuals. 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 she has not worked since April, 2013. Therefore, she 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 respiratory distress, diabetes, psychotic disorder, social anxiety, depression, anxiety and mood disorder.

On December 14, 2012, Claimant underwent a psychiatric evaluation by his treating psychiatrist. Claimant's affect was bright, his mood euthymic. He had already done some research on the intranet on his medications, his diagnosis, prognosis and treatment recommendations. He is clearly above average intelligence. His fund of knowledge was excellent. He participated well when discussing his symptoms, diagnosis, and treatment plan. He was not grandiose on exam. He did not evidence any paranoid ideation. He adamantly denied that there were auditory hallucinations at the time of psychiatric hospitalization, but acknowledged he was having significant symptoms. He felt substance misuse was a very significant component that led to or cause the episode. He stated his goal very clearly was to taper down and get off the medications if possible in three to six months. He agreed to work closely with the psychiatrist. He denied any current suicidal or homicidal plan. His thought processes were organized and coherent. It was difficult to assess his level of insight although he participated in the discussion. He sees chemical abuse as the primary factor but is open to discussion that he may have an underlying bipolar disorder. He also very clearly stated that he did not want to commit his body to ongoing medications unless he felt that it was necessary. He was fully oriented to person, place, time and situation and was able to give informed consent regarding treatments and medications. Diagnosis: Axis I: Bipolar Disorder, most recent episode manic, noting significant contribution due to substance abuse prior to hospitalization; Cocaine Abuse in reported full remission; Caffeine Abuse; Other Substance Abuse (Nutmeg); Axis II: None; Axis III: No known; Axis IV: Stressors are severe; Axis V: GAF=57.

On April 25, 2013, Claimant was voluntarily admitted to the [REDACTED], [REDACTED]. He was diagnosed with depression and was not on any medications. He had attempted to buy a gun the previous day and had been to see a priest. He was actively psychotic and paranoid. He had been off his medications since 2/13/13 of Haldol and Tegretol. He presented with suicidal ideation, poor impulse control, psychiatric symptoms severe to cause bizarre disorder behavior, and sleep

disturbances of 10-12 hours a night. He believed there was a conspiracy going on around him. This was his second admission to the behavior health center. His last admission was 11/2/12. Admission Diagnosis: Axis I: Mood disorder; Psychotic disorder; Axis II: Deferred; Axis III: None current; Axis IV: Problems with primary support, psychosocial stressors related to chronicity of illness; Axis V: GAF at admission was 20. Claimant was discharged on 4/29/13, alert and oriented x3. He denied any suicidal or homicidal ideation and was transported home by his parents.

On May 16, 2013, Claimant's psychologist wrote that he had been seeing Claimant and his family since 11/16/12. It has been extremely difficult and stressful for Claimant and his family. Claimant is suffering from multiple psychiatric disorders, Bipolar disorder, Social Anxiety, and Depression just to name the most prominent. Claimant is unable to work at this time as he is clearly disabled and debilitated.

On May 16, 2013, Claimant's therapist wrote that Claimant has been treated by [REDACTED] since 11/19/12, but has had symptoms as early as 2005. He is treated by a psychiatrist for his medications, this clinician for his psychotherapy. Claimant is diagnosed with Bipolar disorder. He has had two psychiatric hospitalizations since 11/22/12. He has had episodes of mania and clinical depression, as well as psychosis. Claimant has made one very serious suicide attempt during one of these episodes, which required prolonged treatment in the intensive care unit. Currently, Claimant is having symptoms of depression, including depressed mood, low motivation, disturbed sleep and disturbed energy. Prior to this last hospitalization in May, 2013, Claimant was again experiencing suicidal ideation and delusional thinking. Since this episode of his illness began, he has been unable to work on any consistent basis. It is unclear if and when he will be able to return to work as he is not yet psychiatrically stable.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that the 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, the Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the analysis continues to Step 3.

Based on the above Findings of Fact this Administrative Law Judge finds Claimant has shown, by clear and convincing documentary evidence and credible testimony, his mental impairments meet or equal Listing 12.04(A) and 12.04(B):

12.04 Affective disorders: Characterized by a disturbance 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 persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost 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 syndrome 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 decompensation, each of extended duration;

Moreover, his treating psychologist opined that Claimant is disabled based on his mental impairments. Because Claimant's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA, Retro-MA and SDA programs. Consequently, the department's denial of his October 3, 2012, MA/Retro-MA and SDA application cannot be upheld.

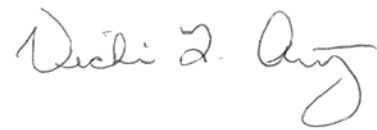
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of 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 process Claimant's October 3, 2012, MA/Retro-MA and SDA application, and shall 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 review Claimant's medical condition for improvement in August, 2014, unless his Social Security 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.

It is SO ORDERED.



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

Date Signed: August 22, 2013

Date Mailed: August 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 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

2013-29102/CAA

VLA/las

cc:

