

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201330740
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: June 20, 2013
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, an in person hearing was held on Thursday; June 20, 2013. Claimant appeared and provided testimony on his behalf with [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

ISSUE

Was disability, as defined below, medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant's MA-P/SDA application on September 12, 2012 was denied on February 12, 2013 per BEM 260/26 [REDACTED] 1, with a hearing request on February 21, 2013.
2. Vocational factors: Age 53, with a GED education, and unskilled/semiskilled work experience.
3. Claimant's last employment ended in January, 2004.
4. Claimant's alleged disabling symptoms: Chronic racing thoughts, mood swings, memory loss, concentration difficulty, and panic attacks; severe pain in right shoulder when raising arm to shoulder level and chronic neck pain; limited to lifting/carrying one gallon of liquid.
5. Claimant alleged disabling medical disorder(s): Bipolar disorder, depression, and anxiety. (DHS Exhibit A, Pg. 645).

6. Medical reports of exams state the claimant on:

June 21, 2012: Has a full range of motion of the right shoulder with no joint deformity or swelling. (DHS Exhibit A, Pg. 10).

July 26, 2012: Is a rather healthy -looking male who is in no acute distress with a GAF score of 45. (DHS Exhibit A, Pg. 44 & 54).

July 29, 2012: Is alert, and oriented times three with a GAF score of 25. (DHS Exhibit A, Pg. 35).

August 7, 2012: Has GAF scores of 35, 40, 45, and 50. (DHS Exhibit A, Pgs. 27-38)

August 14, 2012: Has a *normal* affect; that he is not anxious, has a *normal* knowledge, has *normal* language, exhibits *normal* judgment, has *normal* attention span and concentration. (DHS Exhibit A, Pg. 7).

September 5, 2012: Has a GAF score of 25; that his extremities are *normal* and have an adequate range of motion; that he has a good range of motion in all four extremities; and that he is alert and oriented times three. (DHS Exhibit A, Pgs. 58-60)

October 18, 2012: Is well-developed and well-nourished and in no acute distress; that he has *normal* strength and tone; that he has *normal* extremities with adequate strength and full range of motion. (DHS Exhibit A, Pg. 120).

September 30, 2012: Had GAF scores of 30 and 40. (DHS Exhibit A, Pgs. 38 & 61).

September 14, 2012- November 16, 2012: Was hospitalized for alcohol intoxication and abuse nine different times.

7. State Hearing Review Team decision dated April 27, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 644).

CONCLUSIONS OF LAW

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 (DHS or 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 Bridges Reference Manual (BRM).

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 Bridges Reference Manual (BRM).

Facts above are undisputed.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

When determining disability, the federal regulations are used as a guideline and require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
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. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is

ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. 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).

The claimant had the burden of proof to establish disability in accordance with steps 1-4 above... 20CFR 416.912 (a). The burden of proof shifts to the DHS at Step 5... 20CFR 416.960 (c)(2).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

Acceptable medical verification sources are licensed physicians, osteopaths, or certified psychologists ...20CFR 416.913(a)

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

It must allow us to determine --

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

Step 1

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

The evidence of record established that the claimant has not engaged in substantial gainful activity since January, 2004. Therefore, the sequential evaluation is required to continue to the next step.

Step 2

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

Basic work activities. When we talk about basic work activities, we mean 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).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

The medical reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medical reports do not establish whether the Claimant is impaired minimally, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above for a one year continuous duration.

The claimant's disabling symptoms (Findings of Fact #4) are inconsistent with the objective medical evidence of record (Findings of Fact #6).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent

that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

The medical reports (Findings of Fact #6) show that Claimant's physical examinations were within normal limitations; that his physical impairments were minimal to moderate (not severe); and that his condition is unstable due to alcohol abuse.

Claimant had GAF scores of 25 and 45 in July, 2012, 45 and 50 in August, 2012, 25 in September, 2012, and 30 and 40 in October, 2012. All these scores are considered a severe mental impairment with occupational-functioning. DSM IV (4th edition-revised).

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 using drugs and alcohol and whether any of these limitations would be disabling.

Claimant's testimony and the information indicate that Claimant has a history of alcohol abuse. Applicable hearing is the drug abuse and alcohol (DAA) legislation Public Law 104-21, Section 105(b)(1), 110 stat. 853, 42, UFC, 423 (d)(2)(C), 1382(c)(a)(3)(J) supplement 5, 1999. The law indicates that individuals are not eligible and/or are not disabled when drug addiction or alcoholism is a contributing factor to the determination of disability. After careful review of the credible and substantial evidence on the whole record, this ALJ finds that Claimant does not meet the statutory disability definition under the authority of the DAA legislation because his substance abuse is material to his alleged impairment and alleged disability.

The Claimant has not sustained his burden of proof to establish a severe physical/mental impairment in combination, instead of a non-severe impairment, for the required one year continuous duration.

Therefore, the sequential evaluation is required to stop at Step 2.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet

the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

Therefore, medical disability has not been established at Step 2 by the competent material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides disability was not medically established.

Accordingly, MA-P denial is **UPHELD** and so ORDERED.

/s/
William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 21, 2013

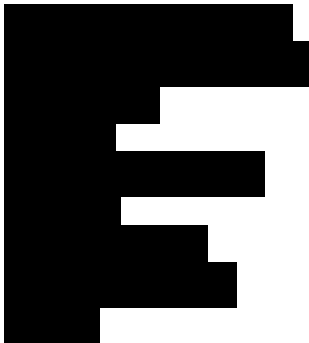
Date Mailed: June 25, 2013

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.

WAS/hj

cc:

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