

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2013-35645
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: April 18, 2013
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

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, a telephone hearing was conducted from Lansing, Michigan on April 18, 2013. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED] [REDACTED]

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on December 19, 2012.
2. On February 7, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit A, pp. 6, 7).
3. The Department notified the Claimant of the MRT determination on February 8, 2013.
4. On February 15, 2013, the Department received the Claimant's timely written request for hearing. (Exhibit A, pp. 3, 4).
5. On March 18, 2013, the MRT found the Claimant not disabled a second time. (Exhibit B, pp. 8, 9).

6. The Claimant alleged physical disabling impairments due to diabetes, anxiety, cervical spondylosis, celiac's disease and chronic pain. (Exhibit A, p. 10).
7. The Claimant alleged mental disabling impairments due to manic depression and anxiety. (Exhibit A, p. 10).
8. At the time of hearing, the Claimant was 48 years old with a [REDACTED] birth date; was 6'0" in height; and weighed 185 pounds.
9. The Claimant has the equivalent of a high school education with some college and an employment history as a general laborer.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 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 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 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).

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

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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.¹ The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint.² 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.³

In the present case, the Claimant alleges disability due to diabetes, anxiety, cervical spondylosis, celiac's disease, chronic pain, manic depression and anxiety.

Between November 21, 2011 and March 23, 2012, the Claimant was seen at the [REDACTED] ([REDACTED] [REDACTED] for treatment regarding bipolar disorder and cannabis abuse. During this time, the Claimant frequently missed appointments but did well managing his bipolar disorder and regulating his moods.

On December 28, 2011, the Claimant presented to the [REDACTED] with diabetes, bipolar and thumb wound. The Claimant was not very forthcoming about his diabetes but emphasized how intelligent he was on how to control his diabetes. The Claimant was counseled on his novolog doses and instructed to keep his thumb wound covered and clean and told it would heal without intervention.

On December 19, 2012, the Claimant was seen at [REDACTED] for a gluteal abscess. The abscess was incised, drained and packed. The Claimant had been injecting his insulin into his buttocks and had been reusing his needles.

On February 10, 2013, the Claimant reported to the Emergency Room at [REDACTED] with an abscess and cellulitis in his right foot. The abscess was incised and drained. The Claimant was advised to follow up with his primary care physician.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In the present case, Claimant testified that he had celiac's disease, diabetes, chronic pain, anxiety, cervical spondylosis, anxiety and manic depression. While the medical evidence showed the Claimant does have celiac's disease and diabetes, it also shows that both are significantly mitigated through diet and medication. It is only when the Claimant stops taking his medication or changes his diet that the Claimant suffers from either condition. Additionally, the Claimant was diagnosed as being bipolar. However, the most recent medical records indicate the Claimant does well managing the disorder and regulating his moods and there is no indication of any episodes of decompensation in the prior year.

¹ *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988).

² *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

³ *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

Therefore, based on the lack of objective medical evidence that the alleged impairment(s) are severe enough to reach the criteria and definition of disability, Claimant is denied at step 2 for lack of a severe impairment and no further analysis is required.

With regard to Claimant's request for disability under the State Disability Assistance (SDA) program, it should be noted that the Department's Bridges Eligibility Manual (BEM) contains policy statements and instructions for caseworkers regarding the SDA program. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, Item 261, p. 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not show that Claimant is unable to work for a period exceeding 90 (ninety) days, Claimant is also not disabled for purposes of the SDA program.

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 or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



Corey A. Arendt
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: April 24, 2013

Date Mailed: April 24, 2013

NOTICE: 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)

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.

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

CAA/las

cc:

