

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2013-37278
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: April 24, 2013
SSPC WEST

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 24, 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 13, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit A, pp. 10, 11)
3. The Department notified the Claimant of the MRT determination on February 15, 2013. (Exhibit 1, pp. 2, 5-7)
4. On March 4, 2013, the Department received the Claimant's timely written request for hearing. (Exhibit A, p. 3)

5. On March 18, 2013, the MRT upon a second review again found the Claimant not disabled. (Exhibit A, pp. 8, 9)
6. The Claimant alleged physical disabling impairments due to bad knees and feet.
7. The Claimant alleged mental disabling impairments due to poor mental health.
8. At the time of hearing, the Claimant was 37 years old with a [REDACTED] birth date; was 5'7" in height; and weighed 369 pounds.
9. The Claimant has the equivalent of a high school education with some college and an employment history as a dishwasher, telemarketer and 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 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 bad feet, bad legs and poor mental health.

On September 20, 2011, [REDACTED] examined the Claimant. [REDACTED] diagnosed the Claimant with a mood disorder and a paranoid personality disorder. [REDACTED] suspected the Claimant was not schizophrenic but had learned to act schizophrenic. [REDACTED] completed a work-related activities (mental) form for the Claimant and found the Claimant able to understand and remember simple instructions and carry out simple instructions.

On October 7, 2011, the Claimant was seen at [REDACTED] [REDACTED] [REDACTED] for complaints of a splinter in his left foot.

On March 23, 2012, the Claimant was seen at [REDACTED] [REDACTED] [REDACTED] for corn treatment on his feet. The corns were trimmed back and the Claimant was advised to get corn pads with holes and cover the corns.

On Jun 25, 2012, the Claimant reported to a [REDACTED] [REDACTED] emergency room with complaints of bilateral shoulder pain and other ailments. The Claimant was seen by [REDACTED]. The Claimant was provided with 1 dose of pain medication. The medication completely resolved the Claimant's symptoms.

On July 3, 2012, the Claimant was seen at [REDACTED] [REDACTED] for complaints of shoulder pain. [REDACTED] examined the Claimant and concluded the symptoms were due to a muscle strain or spasm.

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).

In the fall and winter of 2012/2013, the Claimant volunteered at [REDACTED] and provided over 90 hours of time. The Claimant's primary duties were folding clothing and stocking merchandise.

On February 7, 2013, [REDACTED] completed a Medical Examination Report on behalf of the Claimant. [REDACTED] found the Claimant to have no physical limitations with mental limitations limited to sustained concentration.

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 medical evidence establishing that he does have some mental limitations on his 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.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

The evidence confirms treatment/diagnoses of schizophrenia and leg and foot pain (clinically stable). Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning and are defined in Listing 12.03. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
1. Delusions or hallucinations; or
 2. Catatonic or other grossly disorganized behavior; or;
 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt Affect; or
 - b. Flat Affect; or
 - c. Inappropriate affect;

or

4. Emotional withdrawal and/or isolation;

AND

- B. Resulting in a 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 durations

OR

- C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or changed in the environment would be predicted to cause the individual to decompensate; or
 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In this case, the Claimant has been diagnosed with bipolar paranoid schizophrenia. The medical evidence documents some reported episodes of delusions or

hallucinations, however there is no evidence of marked restrictions in activities of daily living, maintaining social functioning or repeated episodes of decompensation. In light of the foregoing, the Claimant's mental impairment does not meet the intent and severity requirement of a listed impairment within 12.00 as detailed above.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. However there was no evidence of a major joint dysfunction, current fractures, or nerve root impingement resulting in an inability to ambulate effectively. A gain, in light of the foregoing, the Claimant's physical impairment does not meet the intent and severity requirement of a listed impairment within 1.00.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or

restrictions include difficulty function due to nervousness, anxious ness, or depression; difficulty maintaining attention or concentra tion; difficulty understanding or remembering detailed instructions; difficult y in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functi ons of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 41 6.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional as pects of work-related acti vities, the rules in Appendix 2 do not direct factual conclus ions of dis abled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving considerati on to the rules for specific cas e situations in Appendix 2. *Id.*

The Claimant's employment history consisted of general labor. In light of the Claimant's testimony and in consideration of the Occupational Code, t he Claimant's prior work is considered unskilled light/medium work.

The objective medical evidence indicates no physical limitations. Mentally, the Claimant suffers from paranoid schizophrenia. As noted above, there was no evidence of marked restrictions in activities of daily living or maintaining social functioning. And a Mental Residual Functional Capacity Assessment indicated the Claimant could understand and remember simple instruction and carry out simple instruction with only mild or moderate difficulty. If the impairment or combination of impairments does not limit an individual's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is able to return to past relevant work performing general labor. In light of the foregoing, the Claimant is found not disabled at Step 4 with no further analysis required.

The State Disability Assist ance program, which pr ovides financial assistance for disabled persons, was established by 2004 PA 344. The Depa rtment administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are fo und in BAM, BEM, and BRM. A person is considered disabled for SDA purpose s if the person has a physical or mental impairment which m eets federal SSI dis ability standards for at least ninety days. Receipt of SSI or RSDI benefit s based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this cas e, the Claimant is found not di sabled for purposes of the MA-P program; therefore, the Claimant is found not disabled for purposes of the SDA benefit program.

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 benefit program.

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: May 7, 2013

Date Mailed: May 7, 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:

