

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-59164
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: November 20, 2013
County: Livingston

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 November 20, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included General Program Manager [REDACTED]

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 April 3, 2013, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On July 9, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA and SDA due to lack of duration. (Dept Ex. A, pp 8-9).
- (3) On July 15, 2013, the department sent out notice to Claimant that his application for MA, Retro-MA and SDA had been denied.
- (4) On July 17, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 16, 2013, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform a wide range of light work. SDA was denied due to lack of severity. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of arthritis, knee and back pain, headaches, hydrocephalus, brain cyst, anxiety and inflammatory arthritis.
- (7) Claimant is a 52 year old man whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 118 lbs. Claimant completed high school. He has not worked since March, 2013.
- (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 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 March, 2013. 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 arthritis, knee and back pain, headaches, hydrocephalus, brain cyst, anxiety and inflammatory arthritis.

In January, 2013, x-rays of Claimant's lumbosacral spine revealed mild disc narrowing with degenerative changes at L4-L5 and L5-S1. Facet degenerative change is seen at the same levels. No fracture or subluxation is identified. He was diagnosed with chronic thoracic strain.

In February, 2013, Claimant slipped and fell on the ice. He has a shunt in the left neck area for hydrocephalus. His CT scan, shuntogram and T-spine x-rays were unremarkable. The CT scan shows a hypodense area that is a possible cyst. Claimant is aware and will follow up with his primary care physician. He is neurologically intact. His discomfort is on the right muscular area of his upper back. He was treated with pain medication and released.

In August, 2013, Claimant underwent a medical evaluation on behalf of the [REDACTED]. Claimant's chief complaints were arthritis, a ventricular peritoneal (VP) shunt, headaches, memory loss and depression. Claimant did not appear acutely ill or in any acute distress. He was ambulatory with no assistive devices. The examination of the cervical, dorsal and lumbosacral spines clinically did not reveal any striking abnormalities. There was no paraspinal muscle tenderness or spasm. Claimant was cooperative and oriented to time, place and person. There was no memory loss. The gait was normal. He was able to walk on toes and heels. There was no tremor, nystagmus, or ataxia noted. The Romberg test was negative. The higher cerebral cortical functions, including speech and understanding, were normal. All the cranial nerves appeared to be intact. There was no localized muscle wasting, twitching, atrophy, paralysis, or involuntary movements. Pinprick, light touch, temperature, and vibration senses were intact. Deep tendon reflexes were normal. Knee jerks and ankle jerks were normal. Babinski test was negative. The examining physician diagnosed Claimant with degenerative disc disease of the lumbosacral spine, status post left side VP shunt for hydrocephalus and depression. The physician opined that the motion of Claimant's lumbosacral spine is limited but doubtful. The neurological examinations are normal with no nerve root compression.

Claimant also underwent a psychological evaluation in August, 2013. Claimant's alleged disabilities were back-hip pain, headaches, memory loss and depression. Claimant has not been diagnosed with depression. He has not had any inpatient or outpatient treatment. Claimant responds well to instructions. He responds to positive criticism well. He requires no special assistance to complete the examination process.

Overall, he is cooperative, motivated and verbally responsive. He attempts all tasks and works diligently. His eye contact is good. His thoughts are logical, organized, simple and concrete. Content of communication is age appropriate. His mood is frustrated. He reports, "I'm in pain," and then he burst out laughing. Motor activity is within normal limits. There are no unusual or bizarre behaviors. He does not appear to engage in exaggeration or minimization of symptomology. His affect is irritated, but pleasant. Thought content is appropriate with no apparent thought disorder. Claimant does not present with depression, he presents with anger. The examining psychologist opined that overall, Claimant is angry, however, he creates humor and laughs. His memory is intact. He moves quickly without difficulty. No apparent pain behaviors. He is angry, however, does not endorse depression symptoms. There is no difficulty in his ability to comprehend and carry out simple directions and perform repetitive, routine, simple tasks. There is no difficulty in his ability to comprehend complex tasks. Diagnosis: Axis I: Alcohol dependence in remission; Axis IV: Poor family relationships, social support, judgment, insight and social skills. He is not working. He completed high school. His motivation is fair. He is angry at social systems. His activities of daily living are good. They require extra time and rest due to pain and movement according to Claimant; Axis V: GAF=66.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant testified that he had arthritis, knee and back pain, headaches, hydrocephalus, brain cyst, anxiety and inflammatory arthritis. Claimant testified that the shunt was originally placed in 1971, then again in 1995, and since then he has had no problems with it. There are no records regarding his knee in the medical file. Moreover, Claimant was under no physical or mental restrictions according to the medical and psychological evaluations. 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.

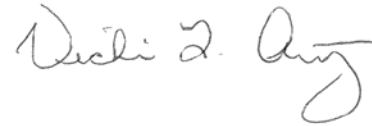
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p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

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, 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: December 9, 2013

Date Mailed: December 10, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

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The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

