

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-55038
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: November 5, 2013
County: Livingston

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was commenced on November 5, 2013, at the Livingston County DHS office. Claimant, represented by [REDACTED] of [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Program Manager [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 January 7, 2014, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly denied Claimant's Medical Assistance (MA), Retro-MA and State Disability Assistance (SDA) application?

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 10, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On March 8, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA for drug and/or alcohol abuse. SDA was denied for lack of duration. (Depart Ex. A, pp 12-13).
3. On March 14, 2013, the department caseworker sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.

4. On June 18, 2013, Claimant filed a request for a hearing to contest the department's negative action.
5. On August 19, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform medium work. (Depart Ex. B, pp 1-2).
6. Claimant had applied for Social Security disability benefits at the time of the hearing.
7. Claimant is a 35 year old man whose birthday is [REDACTED] Claimant is 5'10" tall and weighs 190 lbs.
8. Claimant does have an alcohol and drug history. Claimant smokes eight cigarettes a day.
9. Claimant does not have a driver's license due to his seizures. He has not had a driver's license since March, 2011.
10. Claimant has a high school equivalent education.
11. Claimant is not currently working. Claimant last worked in 2012.
12. Claimant alleges disability on the basis of a closed head injury, cracked vertebrae, out pouching aorta, broken ribs, seizures, short term memory loss, rheumatoid arthritis and anxiety.
13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
14. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

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 (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 Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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.

The federal regulations require that several considerations be analyzed in sequential order:

... 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.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

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). If no, the analysis continues to Step 2.

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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

... You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);

- (3) Laboratory findings (such as ultrasounds, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

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). 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).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not eligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). In this case, Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

The medical information indicates that Claimant suffered a closed head injury, cracked vertebrae, outpouching aorta, broken ribs, seizures, short term memory loss, rheumatoid arthritis and anxiety.

Claimant testified credibly that he has limited tolerance for physical activities and is unable to walk or stand for lengthy periods of time. His back and knees are in constant pain. He hallucinates and hears voices and sees insects. He has high anxiety and has panic attacks if he has to leave his apartment or ride in a car. He cries easily. He does not sleep well. During the hearing, Claimant was observed to be very shaky, tearful and anxious. He stated he quit drinking in October, 2013.

On August 5, 2013, Claimant underwent a psychiatric evaluation by his psychiatrist at [REDACTED]. Claimant has a history of polysubstance disorder with heroin as his drug of choice. Last used four years ago. He has a seizure disorder secondary to his closed head injury he sustained in an auto accident where a tree fell on him. He has some memory loss and PTSD as a result. He has a history replete with substance abuse and more recently with multiple hospitalizations. He has been diagnosed with bipolar disorder. He does at times have psychotic symptoms including visual hallucinations of insects and auditory hallucinations with voices. He has had treatment at a substance abuse facility and is reportedly free of substance abuse at this time. The PTSD symptoms include flashbacks about the accident and also fearfulness about riding on a highway and generally fearfulness in a car. He does not drive because of the seizures. He is having major difficulties with anxiety. He is somewhat housebound wherever he lives because of being anxious about going out in public. He gets more depressed the more isolated he gets. He was recently hospitalized and is on Depakote 250 mg in the morning and 750 mg at night as a mood stabilizer but primarily for seizures. He is also on Neurontin 300 mg BID and Seroquel 100 mg BID. He does not have a strong history of adhering to medication. He has never had benzodiazepines in the past for anxiety. He has been hospitalized 4 times in the past 10 months. He has had some outpatient treatment in the past. Since the accident his memory has diminished. Some of his symptoms including social anxiety and his impaired memory impair his ability to manage a job. Diagnosis: Axis I: Alcohol dependence (with physiological dependence-active as of 7/10/13); bipolar affective disorder, depressed, severe, specified as psychotic behavior (in remission as of 8/5/13); Schizoaffective disorder; Posttraumatic stress disorder; Axis II: Personality disorder; Anxiety disorder; Axis V: GAF=30. The examining psychiatrist opined that Claimant had alterations in thought, mood, irritability and distractibility. The psychiatrist indicated that Claimant is unable to cope and comply with his recommended care and treatment.

On September 9, 2013, Claimant followed up with his psychiatrist. The psychiatrist noted that since his last visit on 8/5/13, Claimant was hospitalized for suicidal ideation. He was discharged from there on Klonopin 1 mg QID. The psychiatrist indicated he was not comfortable with the increase in Klonopin the hospital made, however, because Claimant is still unstable, the psychiatrist decided it makes sense to go with the increase for a month or two. He is also on Depakote EC 250 mg in the morning and 750 mg at night as well as Seroquel 100 mg BID. The latter two medications are being given for mood stability. Claimant presently denies being depressed or suicidal although his friends have indicated that Claimant's mood changes a lot. Claimant did indicate that

other friends thought he was doing okay. He denies suicidal ideation or dysphoric mood. Diagnosis: Axis I: Alcohol dependence (with physiological dependence-active as of 7/10/13); bipolar affective disorder, depressed, severe, specified as psychotic behavior (in remission as of 8/ 5/13); Schizoaffective disorder; Posttraumatic stress disorder; Axis II: Personality disorder; Anxiety disorder; Axis V: GAF=40.

On September 18, 2013, Claimant's psychiatrist completed the Mental Residual Functional Capacity Assessment. According to his assessment, Claimant is markedly limited in his ability to remember locations and work-like procedures; understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule; maintain regular attendance, and to be punctual within customary tolerances; work in coordination with or proximity to others without being distracted by them; make simple work-related decisions; interact appropriately with the general public; ask simple questions or request assistance or travel in unfamiliar places.

Claimant is 35 years old, with a high school equivalent education. Claimant's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F.2d 216 (1986).

The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

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.

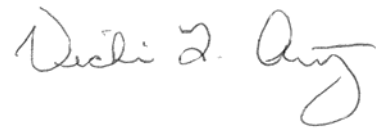
Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's April 10, 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 February, 2015, 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: February 3, 2014

Date Mailed: February 3, 2014

NOTICE OF AP PEAL: 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.

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:

