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

IN THE MATTER OF:



Reg. No.: 2013-64998 Issue No.: Case No.: Hearing Date: County:

2009; 4009 February 5, 2014

Genesee #02

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

Following Claimant's r equest for a hearing, this matter is before the undersigned Administrative Law J udge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 t o 431.250; and 45 CF R 205.10. After due notice, a telephon e hearing was held on February 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and his authorized hearings representative from Partic ipants on behalf of the Depar tment of Human Services (Department) included , Eligibility Specialist.

ISSUE

Did the Department of Human Services (the Department) proper ly deny Claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro MA-P) 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 January 29, 2013, Cla imant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- 2. On May 21, 2013, the Medical Rev iew Team denied Claima nt's app lication stating that Claimant could perform other work.
- 3. On May 29, 2013, the Department case worker sent Claimant notice that his application was denied.

- 4. On August 15, 2013, Claimant filed a request for a hearing t o contest the Department's negative action.
- 5. On October 18, 2013, the State Hearing Review Te am again denied Claimant's application.
- 6. Claimant is a sever-old whose birth date is . Claimant is 5'6" tall and weighs 240 pounds. Claimant is a severe severe
- 7. Claimant last worked in as a Claimant has also worked as a and as a .
- 8. Claimant alleges as disabling impairments: depression, anxiety, bipolar disorder, hypertension, and a back injury.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an ap plicant who requests a hearing because his or her clai m for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believ ed that the decision is inc orrect. The Department will provide an adm inistrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department polic ies are found in the Bridges Administrative Manua I (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by T itle 42 of the C ode of Federal Regulations (CFR). The Department of Human Servic es (DHS or Department) adm inisters 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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substant ial 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 set order is used to deter mine disability . Current work activity, severity of impairments, residual functional capacity, past wor k, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experienc e. 20 CFR 416.920(c).

If the impairment or combination of impair ments do not signific antly limit physica I or mental ability to do basic work activities, it is not a severe impairment(s) and disab ility does not exist. Age, education and work ex perience will not be c onsidered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings wh ich demonstrate a medical im pairment.... 20 CFR 416.929(a).

...Medical reports should include -

- (1) Medical history.
- (2) Clinical findings (suc h as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing bas ic work activities is evaluated. If an individual has the ability to perform basic work activities with out significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

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

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other a cceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an indiv idual can do des pite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidenc e relevant to the claim, including m edical opinions, is rev iewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decis ion about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other ev idence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical s ource finding t hat an individual is "d isabled" or "unable to work" does not mean that disability e xists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is <u>not</u> required. These steps are:

- 1. Does the client perf orm S ubstantial 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 cli ent is ineligible for MA. If yes, the analysis c ontinues to Step 3. 20 CF R 416.920(c).
- 3. Does the impairment appear on a spec ial listing of impairments or are the cli ent's symptoms, signs, and laboratory findings at least eq uivalent in s everity to the set of medical findings specified for the listed impairment? If no, the analys is 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).
- 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 f or MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Claimant is not engaged in subst antial gainful activity and has not worked since Claimant is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidenc e on the record indicates that Claimant testified on the record he lives with his in an and he is single with no children under 18 and no income. He receiv es Food Assistance Program benefits and the Adult Medical Pr ogram. Claimant has no dr iver's license. Claimant does not cook. grocery shop or do any household chores. He watches televis ion two hours per day. Claimant testified he can stand for 15 minutes and can sit for 30 to 40 minutes at a time. He is able to walk one block. He is able t o shower and dress himself but sometimes needs help with his pants. He cannot tie his shoes, bend at the waist or touch his toes. His level of pain on a scale from 1 to 10 without medication equals a sev en and wit h medication is a three. He is right-handed. His hands, arms, legs and feet are fine. Heaviest weight he can carry is 5 pounds. Cl aimant smokes half pack of cigarettes per day. His doctors told to guit.

There were multiple r ecords from the for multiple complaint s including earache, sore throat, dysphasia with pain in his throat and headaches and chest pain, pages 387 – 1030. An was for chest pain, page 477. The Claimant stat ed that he had run out of his Assessment includes atypical chest pain, uncontrolled hypertens ion and PUD, page 496. He was seen again . He had not followed up with the outpatient stress for test after his , page 707. The Claimant's symptoms were noted to be clearly nine anginal/ non-cardiac symptoms of musculoskeletal etiology. His cardiac status was stable, page 713. A dated s howed the Claimant presented his idea s in a logical and coherent fashion. Speech was understandable. His affect was largely withi n normal limits. He denied any history of psychiatric hospitalization. Some mild ma lingering appeared possible at times on the sensorium and mental capacity portion of the evaluation, page 235. Diagnosis included bipolar disorder by history with panic attacks and history of alcoholism and drug abuse, dated page 8. Another showed the Claimant's eye contact was appropriate, page 225. Grooming/hygiene were appropriate. His speech was unimpaired. Stream of mental activity was spontaneous and organized. He reported generally having a bad attitude . He say s he is an angry per son angry person, page 226. Diagnosis included mood disorder NOS and anxiety disorder NOS, page 228. An dated showed the Claim ant was 5'6" tall await 231 pounds. His blood pressure was 153/97. His BMI was 37. 12. His pulmonary, cardiovascular and abdominal examinations were unremarkable. He had left rib pain on palpation. He had a cyst on t he right upper back, nine draining, tender to palpation, page 99. Assessment included c ostochondritis, skin abscess of the back, hiatal hernia and difficulty swallowing. The medical evidenc e of record indicates that the Claimant retains the capacity to perform a wide range of simple, unskilled medium work.

burden of proof of establis hing that he has a severely At Step 2, Claimant has the restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinic al findings that suppor t the reports of symptoms and limitations made by the Claimant. There are no labor atory or x-ray findings listed in the file. The clinical impression is that Claimant is stable. There is no medical finding that Claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Claimant has restricted himself from tasks associated with occupational functioning based upon his r eports of pain (sympt oms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insu fficient to establish that Claimant has a severely restrictive physical impairment.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations ar e assessed using the criteria in paragraph (B) of the listings for mental di sorders (descriptions of restrict ions of activities of daily living, social functioning; c oncentration, persistence, or pace; and ability to tolerat e increased mental demands associated wit h competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/ps ychiatric e vidence in the record indicating Claimant suffers severe ment al limitations. There is no mental residual functiona I capacity assessment in the record. There is in sufficient evidence contained in the file of depression or a cognitive dysfun ction that is so sever e that it would prevent Claimant from working at any job. Claimant was or iented to time, person and plac e during the hearing. Claimant was able to answer all of the questi ons at the hearing and was responsive to the questions. The evidentiar y record is insufficient to find that Claimant suffers a severely restrictive mental impair ment. For these reasons, this Administrative Law Judge finds that Claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at thi s step based upon his failure to meet the evidentiary burden.

If Claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Claima nt's condition does not give ris e to a finding that he would meet a statutory listing in the code of federal regulations.

If Claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon hi s ability to perform his past relevant work. There is no ev idence upon which this Admin istrative Law Judge c ould base a finding that Claimant is unable to perform work in which he has engaged in, in the past. Therefore, if Claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does not have residual functional capacity.

The residual functional capac ity is what an individual can do desp ite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we class ify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more t han 10 pounds at a time and occasionally lifting or carrying articles lik e docket files, ledgers, and small tools.

Although a sedentary job is defined as one whic h involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light wor k involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this categor y 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.... 20 CFR 416.967(b).

Claimant has submitted insufficient objecti ve medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has a failed to pr ovide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 mont hs. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/ps vchiatric evidence contained in the file of depression or a cognitive dysfunction that is so sever e that it would prevent Claimant from working at any job. Claimant was able to answer all the guestions at the hearing and was responsive to the questions. Claimant was oriented to time, person and plac e during the hearing. Claimant's complaints of pain, while profound and credible, are out medical evidence contained in the file as it relates to of proportion to the objective Claimant's ability to perform wo rk. Therefore, this Administrative Law Judge finds that the objective medical evidence on the rec ord does not estab lish that Claimant has no residual functional capacity. Clai mant is dis qualified from receiving disability at Step 5 based upon the fact that he has not establis hed by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medicalwith a Vocational guidelines, an individual (age and an unskilled work history who is limited to me dium or light work is not considered disabled.

It should be noted that Claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed tr eatment which would be expect ed to restor e their ability to engage in s ubstantial activity without good cause there will not b e a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department's Program Elig ibility Manual contains t he following policy statements and instructions for casework ers regarding t he State Disability Assistance program: to receive State Disability Assist ance, a person must be dis abled, caring for a disable d person or age 65 or ol der. BEM, Item 261, p. 1. Becaus e the Claimant does not meet the definition of disabled u nder the MA-P program and becaus e the evidence of record does not establish that Claiman t is unable to work for a per iod exceeding 90 days, the Claimant does not meet the disability crit eria for State Disab ility Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claim ant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that the Depar tment has appropriately establis hed on the record that it was acting in compliance with Department policy when it denied Claimant's application for Medical Assistance, retroactive Medica I Assistance and State Disability Assistance benefits. The Claimant should be able to perform a wide r ange of light or sedentary work even with his impairments. The D epartment has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is AFFIRMED.

Landis

Randis Y Lain

Y. Lain Administrative Law Judge for Maura D. Corrigan, Director Department of Human Services

Date Signed: 2/6/14

Date Mailed: 2/7/14

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

Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

2013-64998/LYL

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 or iginal 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.

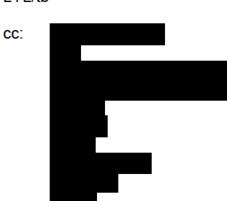
The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

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



LYL/tb