

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

IN THE MATTER OF:



Reg. No.: 2013-38745
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: July 24, 2013
County: Tuscola

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, a telephone hearing was held on July 24, 2013, from Lansing, Michigan. Claimant, represented by [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [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 February 14, 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 January 8, 2013, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On March 22, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of other work. SDA was denied for lack of duration. (Depart Ex. A, pp 36-37).
3. On March 27, 2013, the department caseworker sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.

4. On April 3, 2013, Claimant filed a request for a hearing to contest the department's negative action.
5. On June 21, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and he retains the capacity to perform medium unskilled work. SDA was denied for lack of duration. (Depart Ex. B, pp 1-2).
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 51 year old man whose birthday is [REDACTED] Claimant is 5'10" tall and weighs 212 lbs.
8. Claimant does not have an alcohol or drug problem. Claimant smokes a half to one package of cigarettes a day.
9. Claimant has a driver's license and is able to drive.
10. Claimant has a high school education.
11. Claimant is not currently working. Claimant last worked in August, 2012.
12. Claimant alleges disability on the basis of possible Tourette's syndrome, bipolar disorder, depression, anxiety, severe learning disability, right shoulder, back and knee pain, obstructive sleep apnea and suicidal thoughts.

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 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 manuals. 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 no 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 August, 2012. 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 possible Tourette's syndrome, bipolar disorder, depression, anxiety, severe learning disability, right shoulder, back and knee pain, obstructive sleep apnea and suicidal thoughts.

In February, 2013, Claimant underwent an initial psychiatric evaluation at [REDACTED]. Claimant stated that he started treatment for mood swings. Reportedly he gets very moody, is impulsive, has racing thoughts and flies off the handle. He stated the mood swings are so severe that sometimes he gets into fights and gets verbally aggressive. He reported that he was treated with Depakote in prison and it has continued. He stated Depakote is significantly helping him with his mood swings. He stated that he noticed that he has had whole body jerks for most of his life but he is noticing them more often now. According to the reports from prison, he has involuntary movements. Claimant added that the body jerks get worse when he is stressed out. Upon examination there was no fine hand tremor or any other abnormal involuntary movements. He denied ever being on any antipsychotic medications. At this time he stated he is doing much better with his mood. He wants to get health benefits and Social Security. Also he wanted to be treated for his jerky movements. Prognosis is to be determined. The examining psychiatrist opined that Claimant did not appear in any acute psychiatric distress. At times he was very talkative and hyperverbal. He denied auditory and visual hallucinations. He denied any paranoia. His mood was mildly anxious and he was worried about his financial situation. He is also worried about his health issues as he does not have insurance. His affect was mildly anxious. He denied suicidal or homicidal ideations. He was oriented to person, place and time. On brief testing his judgment, memory, attention and concentration were fair. Insight was present to some extent. At times he needed redirection to stay on topic as he wanted to talk about details of what happened to him in prison and what he is doing regarding filing for Social Security. Diagnosis: Axis I: Bipolar disorder, History of alcohol dependence: Axis III: Knee pain, whole body jerky movements; Axis IV: Financial issues, health issues, interpersonal issues; Axis V: GAF=45-50. According to his Mental Residual Functional Capacity Assessment, Claimant was markedly limited in his ability to understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; respond

appropriately to change in the work setting and to set realistic goals or make plans independently of others.

During Claimant's medication review at [REDACTED] in May, 2013, Claimant stated he was doing fairly well. Claimant stated he was keeping himself busy. He reportedly is doing projects for his family, helping his brother and his aunt. He stated he is trying to stay out of trouble and reportedly is having financial stress and other than that he was doing fairly well. He stated he is seeing his support coordinator every two weeks and reportedly his probation issues are going fairly well. His affect was pleasant and reactive. He denied suicidal or homicidal ideations. He also denied auditory and visual hallucinations. He did not notice any jerky movements today. He stated they come and go and some times when he is stressed they are more frequent. He is diagnosed with bipolar disorder, mixed with psychotic features and has a history of alcohol dependence. Reportedly, he is waiting for a consult at the University of Michigan for his jerky movements.

On [REDACTED] Claimant underwent an evaluation at the [REDACTED] for his reported body jerks. Claimant has a history of bipolar disorder and multiple personality disorder presenting with worsening involuntary movements the past two years. Claimant reported that since 1981 he has noted involuntary jerking movements of his body. These movements are randomly located and can involve his face, head, arms and legs. These movements have been present almost consistently for many years. He has been under a lot of stress, with difficulty finding a job and has been out of work for the past two years. He was also incarcerated during this period and is currently applying for social security disability benefits. He believes that these movements could result in injury during work and that the movements could be used as an excuse for not hiring him. According to the two physicians conducting the Movement Disorder evaluation, Claimant's clinical picture is most consistent with psychogenic movements, based on the clinical history, the appearance of the movements and the seeking of medical care for the first time in the setting of a disability claim.

Claimant testified during the hearing that he has suicidal thoughts. He stated that he spends his day chauffeuring for his Aunt to help her run errands. He also works in the garage making welders. He indicated he has pain in his back and knees. Claimant rated his pain as 4-6 out of a scale of 10, and stated he does not take anything for the pain.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). ***There is no objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment that has lasted or is expected to last at least 12 months, consecutively. While Claimant does appear to suffer from bipolar disorder and psychogenic involuntary movements, he has been prescribed psychotropic medication and there is no evidence that his bipolar disorder is not being managed by the prescriptions. Therefore, Claimant is denied at Step 2 for lack of a severe impairment and no further analysis is required.***

Claimant has not presented the required competent, material and substantial evidence which would support a finding that Claimant has a severe impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for 12 months in a row. 20 CFR 416.920(c); 20 CFR 404.1521. Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. Therefore, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

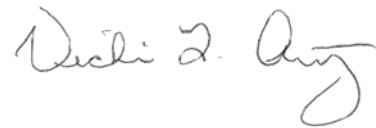
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance, Retroactive Medical Assistance and State Disability Assistance.

DECISION AND ORDER

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

Accordingly, the department's determination is **AFFIRMED**.

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 5, 2014

Date Mailed: March 5, 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:

