

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

IN THE MATTER OF:



Reg. No.: 2013-60794
Issue No(s): 2009; 4009
Case No.: [REDACTED]
Hearing Date: November 14, 2013
County: Genesee-02

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 November 14, 2013, from Lansing, Michigan. Claimant 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 20, 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 May 10, 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/Retro-MA indicating Claimant was capable of other work. SDA was denied due to lack of duration. (Depart Ex. A, pp 1-2).
3. On July 12, 2013, the Department sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.

4. On July 24, 2013, Claimant filed a request for a hearing to contest the department's negative action.
5. On September 23, 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 was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 37 year old man whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 200 lbs.
8. Claimant does have an alcohol or drug history. Claimant smokes half a package of cigarettes a day.
9. Claimant does not have a driver's license and has never had one.
10. Claimant has a sixth grade education through special education and is illiterate.
11. Claimant is not currently working and has no substantial gainful work history.
12. Claimant alleges disability on the basis of anxiety, depression, mood disorder, back problems, asthma, one lung, severe chronic obstructive pulmonary disease Stage 3, gastroesophageal reflux disease and a learning disability.

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.

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 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 anxiety, depression, mood disorder, back problems, asthma, one lung, severe chronic obstructive pulmonary disease stage 3, gastroesophageal reflux disease and a learning disability.

Claimant testified during the hearing that he currently has an infection in his right foot and can only walk for five minutes, is unable to sit and is always laying down and has to lean on something to stand. He admitted to smoking half a pack of cigarettes a day and stated he quit drinking and using drugs a year ago.

Claimant's medical records indicate Claimant attempted suicide in September, 2012, by ingesting an unknown amount of Tylenol, drinking and smoking cocaine. He was admitted to the hospital in October, 2012, with suicidal ideations, alcohol intoxication and auditory hallucinations. His toxicology screen was positive for cocaine and his alcohol level was 0.191. Claimant testified he was also admitted in August, 2013, and September, 2013 for suicide attempts. However, the medical file does not contain any documentation of the hospitalizations.

On [REDACTED], Claimant underwent an independent medical examination. He was diagnosed with illiteracy and low back pain following a gunshot wound with no signs of radiculopathy. The physician opined that Claimant is able to sit, stand or walk eight hours during an eight-hour day. He can use his hands for fine or gross manipulation. He has no significant lifting restrictions. He can use his arms and hands at and above shoulder level.

On [REDACTED], Claimant was given a psychological evaluation by the [REDACTED]. Diagnoses: Axis I: Bipolar disorder, Anxiety disorder, Alcohol Dependence reported to be in Early Full Remission; History of Cocaine Dependence (Per Community Mental Health, denied by Claimant); Axis III: Back pain per Claimant; Axis IV: Financial; Axis V: GAF=53. Prognosis is guarded. The examining psychologist opined that Claimant is capable of better performance on items in the mental status section. Claimant's performance is inconsistent with his overall verbal presentation. The psychologist indicated he thought this behavior is unrelated to the symptoms of his alleged mental condition, but was in many ways reflective of his personality disorder. The psychologist reported that Claimant's mental abilities to understand, attend to, remember, and carry out instructions are moderately impaired. Claimant's abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace are moderately impaired.

On [REDACTED], Claimant was transported to the emergency department by ambulance for an assault. Claimant had been drinking and had gotten into a fight with the security guard at his apartment complex. Claimant was agitated and crying. He

was uncooperative at times. Claimant pulled out his IV, after numerous redirect attempts by the nurse. Claimant became increasingly agitated and verbally abusive toward the nurse and the doctor was notified. When the doctor arrived, Claimant was walking around the room and stated, "I'm not taking off my fucking clothes." Claimant undressed with security in the room. Claimant was given a urine cup for a sample. Claimant stated it was going to be dirty. Claimant stated, "I've done coke, alcohol." Claimant's lab results were negative for cocaine.

On [REDACTED], Claimant was admitted to the hospital with a 2-day history of lethargy and bilateral lower extremity edema, erythema and pain as well as lower extremity weakness. After a detailed history and exam, the symptoms were thought to be a result of Depakote use. Depakote was stopped at that time. Claimant also had a CT brain without contrast due to lethargy. It was an unremarkable noncontrast CT of the brain. There was no evidence of mass, bleed or infarct. There was also a CTA chest done for pulmonary embolism because he was mildly hypoxic at the time. There was no evidence for pulmonary embolism on CTA. He also had a chest x-ray which showed no acute cardiopulmonary process. Lower extremity Dopplers were done which were negative for any acute venous thrombosis. Claimant was started on IV vancomycin for possible cellulitis. The second day Claimant's erythema and edema as well as weakness had completely resolved. He was no longer lethargic at that time. Neurology was consulted and it was suggested his dose of Depakote be decreased by 25%. On the third day, Claimant denied any chest pain. There was no shortness of breath; however, PFTs were done the day prior which showed severe chronic obstructive pulmonary disease stage 3. Claimant was discharged on 6/16/13 with a diagnosis of bilateral lower extremity cellulitis, severe chronic obstructive pulmonary disease stage 3, bipolar, anxiety and depression and nicotine dependence.

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, anxiety and depression, 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.

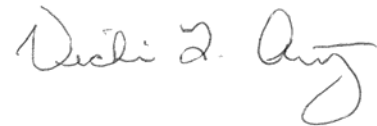
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance, Retroactive Medical Assistance and State Disability Assistance.

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 10, 2014

Date Mailed: March 10, 2014

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.

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:

