

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

IN THE MATTER OF:



Reg. No.: 2014-13745
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: April 16, 2014
County: Lake

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 from Lansing, Michigan. Claimant, represented by his [REDACTED] case worker [REDACTED] appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

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 October 15, 2013, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On November 1, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of performing past relevant work. SDA was denied for lack of duration.
3. On November 7, 2013, the Department sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.
4. On November 13, 2013, Claimant filed a request for a hearing to contest the Department's negative action.

5. On February 4, 2014, the State Hearing Review Team (SHRT) denied MA/Retro-MA finding Claimant retains the capacity to perform simple and repetitive tasks. SDA was denied due to a lack of duration.
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 39 year old man whose birthday is [REDACTED].
8. Claimant is 5'10" tall and weighs 150 lbs.
9. Claimant does not have an alcohol or drug history. He smokes a pack of cigarettes a day.
10. Claimant has a suspended driver's license.
11. Claimant has a high school education.
12. Claimant is not currently working. Claimant last worked in 2007.
13. Claimant alleges disability on the basis of a stroke, depression, bipolar disorder, antisocial personality disorder, low back pain, pancreatitis, diabetes and psychosis.
14. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
15. 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 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.

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 is 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 ineligible 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. Claimant is suffering from a stroke, depression, bipolar disorder, antisocial personality disorder, low back pain, pancreatitis, diabetes and psychosis. 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 was a manager for 10 years until his nervous breakdown and suicide attempt. As such, there are no 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 suffers from a stroke, depression, bipolar disorder, antisocial personality disorder, low back pain, pancreatitis, diabetes and psychosis.

Claimant testified credibly that he has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. He stated that since his nervous breakdown in 2007, he will be on medications for a while, but then they stop working and his doctor has to try him on something else. Claimant testified he also has uncontrolled diabetes and psychosis.

In September, 2013, Claimant's treating psychiatrist completed a Psychiatric Examination Report on behalf of the Department. The psychiatrist indicated that Claimant's hygiene and dress are fair. He does not shower or leave home unless he needs to work or has a [REDACTED] appointment. Claimant has a thought and mood disorder. His weight loss is significant. His diabetes and depression are negatively affecting his job performance. He isolates at home. He has ongoing depression, auditory hallucinations and an inability to function adequately at times. He avoids social interaction overall and isolates at home. He feels paranoid and anxious in public. He has become increasingly more depressed this year and is trying to maintain his limited employment of 3 hours 2-3 days a week while combating his symptoms of mental illness. He has poor sleep despite various sleep aids. He does not leave the house other than to go to work due to his agoraphobia. He is socially isolative, with a lack of primary and social support. Diagnosis: Axis I: Bipolar disorder; Axis II: antisocial personality disorder; Axis III: lower back pain; bronchial asthma; insulin dependent diabetes, history of pancreatitis; Axis IV: occupational problems; Axis V: Current GAF=40; Last year GAF=42. According to his Mental Residual Functional Capacity Assessment, Claimant is markedly limited in his ability to understand and remember detailed instructions, complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, accept instructions and respond appropriately to criticism from supervisors and to respond appropriately to change in the work setting.

In October, 2013, Claimant's treating physician completed a Medical Examination Report at the request of the Department. Claimant was diagnosed with depression, bipolar with psychosis, anxiety, diabetes and a history of pancreatitis. The physician indicated Claimant's condition was stable and he had no physical limitations. However, the physician also noted that Claimant was unable to meet his own needs in the home and to refer to the psychiatric evaluation.

In March, 2014, Claimant was admitted to the hospital for an embolic stroke. Claimant's echocardiogram revealed a left ventricular ejection fraction of 58%, trace mild regurgitation and mild tricuspid regurgitation. The CT angiogram indicated an occlusion of the P2 segment of the left posterior cerebral artery. A CT of the head without IV contrast showed multiple areas of cerebral infarct, the largest involving the left posterior parietal/occipital and portion of the temporal lobe. An MRI of the brain with and without contrast revealed evolving areas of acute left hemispheric infarction and multiplicity in different vascular distributions suggestive of an embolic etiology. The transesophageal echocardiogram revealed a left ventricular ejection fraction of 60%. A patent foramen ovale was present. After 7 days, Claimant was stable from a gross motor standpoint and was able to walk on his own without difficulty. However, word finding and memory impairments remained despite interventions with speech and language. Claimant was deemed appropriate to send to acute rehabilitation for further care. However, this was not done because he had no insurance. Arrangements were made with Claimant's daughter, mother and other family friends to provide around-the-clock assistance for Claimant at home upon discharge.

In April, 2014, Claimant underwent a psychiatric evaluation based on his recent stroke on Claimant's birthday in March, 2014. Claimant reported difficulty with speech, memory, reading and writing since the stroke. He is having difficulty obtaining his psychotropic medications due to a lack of insurance. Claimant's treating psychiatrist opined Claimant is unable to do any type of work activity at this point in time due to his recent stroke and his resulting emotional condition. Diagnosis: Axis I: Bipolar disorder; Axis II: Antisocial personality disorder; Axis III: lower back pain, bronchial asthma, insulin dependent diabetes; history of pancreatitis; Axis IV: occupational problems; Axis V: GAF=52. Because Claimant's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

Claimant is 39 years old, with a high school 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 F2d 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.

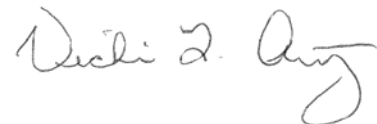
DECISION AND ORDER

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 October 15, 2013, 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 May, 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: May 2, 2014

Date Mailed: May 2, 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:

