

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

IN THE MATTER OF:

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Reg. No.: 2014-16611
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 26, 2014
County: Wayne (82-55)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 March 26, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included

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Claimant had listed a hearing representative on his hearing request. This representative did not appear for the hearing. Claimant was advised he had the right to representation and if he chose to proceed with his hearing without his representative, he would be waiving his right to appeal the decision based upon a lack of representation. Claimant waived his right to representation and requested the hearing proceed.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

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 applied for MA-P.
2. On November 14, 2013, the Medical Review Team denied Claimant's request.

3. On December 10, 2013, Claimant submitted to the Department a request for hearing.
4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 42 years old.
6. Claimant completed education through a GED.
7. Claimant has employment experience (last worked 2009 earning over a substantial gainful level) as a prep cook which required him to stand/walk the majority of the time, limited sitting and lifting 20-25 pounds. He also worked as a general laborer which required him to stand/walk the majority of the time, limited sitting and lifting 50-75 pounds.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from depression, bipolar disorder, anxiety and insomnia.
10. Claimant has no significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has some limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 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).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are 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.

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

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

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite 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 classify 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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it

significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with depression, bipolar disorder, anxiety and insomnia. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treatment records and medical evidence are detailed below.

Claimant's medical records included a [REDACTED], psychiatric evaluation which indicated a GAF of 48 and a diagnosis of major depression, recurrent, moderate. Claimant demonstrated good grooming, timeliness, orientation to times four, calm behavior with social smile, no psychosis evident, logical and coherent thought process, intact judgment, normal speech, good eye contact, no delusional thoughts, no obsessive or compulsive thought, average intelligence, poor insight, pleasant or happy interaction and sadness. Claimant had no suicidal thoughts or homicidal thoughts.

A [REDACTED] psychiatric evaluation noted a GAF of 50 and a diagnosis of major depression, recurrent, moderate. He reported experiencing anger, audio hallucinations, anxiety, insomnia, racing thoughts, violent thoughts, hopelessness, mood swings and sadness. A DHS-49E Mental Residual Functional Capacity Assessment completed by the same physician noted that Claimant was markedly limited in five areas of the assessment and moderately limited in ten other areas. In the remaining five areas, Claimant was found to be not significantly limited or showed no evidence of a limitation. This form was completed and signed on [REDACTED] based upon the [REDACTED] evaluation.

A DHS-49 was completed on [REDACTED] indicating a diagnosis of insomnia and depression. Claimant's condition was found to be stable and no limitations were indicated in one area of the DHS-49 regarding physical limitations. However the individual completing the DHS-49 indicated a lifting restriction of 10 pounds or less frequently and up to 50 pounds or more occasionally. There was also an indication noted that Claimant could stand and/or walk at least 2 hours in an 8-hour work day and no limitation on sitting. No limitations were noted for use of hand/arms or feet/legs for repetitive movements. No limitations were noted for the mental evaluation area of the form and Claimant was found capable of meeting his own needs in his own home.

A [REDACTED] health assessment included for consideration indicated Claimant denied any health concerns. It was noted he has smelly feet and pain in his right knee when bent.

On [REDACTED] a DHS-49D was completed based upon the [REDACTED] evaluation. The DHS-49D simply referred to the psychiatric evaluation. The DHS-49E was submitted and signed on [REDACTED]. The newly dated and signed DHS-49E indicates Claimant was seen on [REDACTED]. The DHS-49E now indicates the Claimant was limited in all areas of the mental residual functional assessment. No explanation was provided on the form as to why Claimant was markedly limited in all areas.

Claimant testified to the following symptoms and abilities: struggles to be around large groups, poor sleep, scared at night thinking someone is in his house, paranoid thoughts about people hurting him, nervous, his legs shake when he is sitting, can sit 10-15 minutes before knees hurt, no medical restriction on lifting, able to manage personal chores, isolates himself in his home, able to manage grocery shopping, able to manage

personal hygiene needs, daily anxiety and panic attacks, not hearing voices, no suicidal thoughts and poor memory.

The restrictions imposed by this physician are not supported by acceptable medical evidence consisting of clinical signs, symptoms, laboratory or test findings, or evaluative techniques and are not consistent with other substantial evidence in the report. Claimant's physician did not present sufficient medical evidence to support his opinion. The evidence presented failed to support the position that Claimant is incapable of a full range of simple unskilled work activities. See 20 CFR 416.927c (2) and .927d(3) and (4). Claimant's medical provider has provided conflicting documentation regarding Claimant's mental health. The mental health records don't support the change in mental functional capacity asserted by Claimant's physician.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was as a prep cook, which required him to stand/walk the majority of the time, limited sitting and lifting 20-25 pounds. Claimant also had prior work experience as a general laborer which required him to stand/walk the majority of the time, limited sitting and lifting 50-75 pounds. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e). Based upon the above, Claimant is found not disabled at this step of the analysis. The records presented fail to demonstrate that Claimant is not capable of his past employment either as a prep cook or in a general labor position. Claimant's treating records indicated some restriction in mental areas but the records fail to support a finding that Claimant would be incapable of performing simple unskilled work such as those positions he has held in the past.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHELD.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 27, 2014

Date Mailed: March 27, 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

JWO/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]