

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-33389
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 17, 2013
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, an in-person hearing was held on July 17, 2013, from Pontiac, Michigan. Participants on behalf of Claimant included Claimant; [REDACTED], Claimant's sister; [REDACTED], Claimant's mother; and [REDACTED], Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. The records were received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On January 9, 2014, this office received the SHRT determination which found Claimant not disabled.

This matter was re-assigned to the undersigned Administrative Law Judge for a final determination of Claimant's disability.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On November 16, 2012, Claimant submitted an application for public assistance seeking MA-P benefits retroactive to August 2012 and September 2012.
2. On January 4, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On January 11, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On February 27, 2013, the Department received Claimant's timely written request for hearing.
5. On May 24, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged physical disabling impairment due to asthma and epilepsy.
7. Claimant alleged mental disabling impairments due to bipolar disorder.
8. At the time of hearing, Claimant was [REDACTED] with an [REDACTED], birth date; was [REDACTED] in height; and weighed [REDACTED].
9. Claimant is a high school graduate with an associate's degree and full-time college attendance and an employment history of work as physical therapy assistant, dispatcher, and car salesperson.

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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (RFT).

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).

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 (1) whether the individual is engaged in substantial gainful activity (SGA); (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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 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)

In general, the individual has the responsibility to establish a disability 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 416.912(a); 20 CFR 416.913. 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(d).

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 applicants 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).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i).

If an individual is working and the work is substantial gainful activity (SGA), then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under step 1 and the analysis continues to step 2.

Step Two

Under step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement states that the impairment is expected to result in death or have lasted or must be expected to last for a continuous period of at least 12 months. 20 CFR 416.922. 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 416.920(a)(4)(ii); 20 CFR 416.920(c). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. CFR 416.921(b).

In addition to the above, a special technique is used to evaluate mental impairments. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured

settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3).

At the second step, the individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *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).

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant alleges disability due to asthma, epilepsy, stomach issues and bipolar disorder.

Claimant's medical evidence showed that she had a laparoscopic cholecystectomy for symptomatic cholelithiasis on August 22, 2012. She returned to the hospital a week later on August 26, 2012 complaining of abdominal pain, and a drain placement for bile leak was performed. She was readmitted to the hospital on September 5, 2012 complaining of abdominal pain, increased drainage from the drain and burning at urination. Additional procedures followed, including an ERCP and stent placements for bile duct repair. An x-ray of Claimant's abdomen after the procedures showed a decrease of overall gaseous distension of the bowel with a few scattered air-fluid levels throughout the colon, with no evidence of obstruction or free intraperitoneal air. Her September 11, 2012 hospital discharge summary showed that following the final procedure, Claimant's condition had improved, her pain was adequately controlled, and she had normal bowel function.

The record included a psychiatric evaluation dated December 2, 2012. The evaluation noted that Claimant had a long-standing history of alcohol, marijuana, cocaine and heroin use. Although she stopped using cocaine and heroin, she continued to drink alcohol whenever she got mad or upset. Claimant's mood was described as dysphoric and depressed and her affect was constricted. She told the evaluator that she never gets very happy but gets very angry where she starts throwing things, kicking things, screams at the top of her lungs and then isolates and gets withdrawn and sleeps a lot. Claimant's thought process was goal-oriented but she was found to have auditory hallucinations and delusional thought content. No diagnosis for any mental illness is identified in the evaluation.

The medical evidence presented was insufficient to establish that Claimant had any significant limitations in her ability to perform activities of daily living based on her physical conditions. Even though Claimant alleged ongoing stomach issues, the hospital records from September 2012 showed that Claimant's condition had improved, her pain was adequately controlled, and she had normal bowel function. There were no medical records showing any ongoing medical issues concerning the stomach issues. Although Claimant's September 2012 hospital records show a past history for asthma, hypertension, thyroid, diabetes, and epilepsy, no medical records concerning these conditions was presented into evidence.

Furthermore, the December 2012 psychiatric evaluation fails to establish that a medically determinable mental impairment exists. There is no diagnosis listed and no evidence establishing that Claimant's mental condition resulted in any significant limitation in her ability to perform activities of daily living. The evidence presented fails to establish an impairment or combination of impairments that significantly limits Claimant's physical or mental ability to do basic work activities.


Based on the evidence in the record, Claimant has **not** presented sufficient evidence to show that the impairment presented meets the definition of severity and that it is expected to result in death, or has lasted, or is expected to last, for a continuous period of not less than 12 months. Accordingly, Claimant is found ineligible for disability benefits at Step 2 with no further analysis required.

DECISION AND ORDER

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

2013-33389/ACE

Accordingly, It is ORDERED that the Department's determination is AFFIRMED.


Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 14, 2014

Date Mailed: March 14, 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

2013-33389/ACE

ACE/tlf

cc:

