

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-014835
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 6, 2015
County: Wayne-District 19

ADMINISTRATIVE LAW JUDGE: Vicki 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 January 6, 2015, from Lansing, Michigan. Claimant, represented by [REDACTED], [REDACTED] of [REDACTED], personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator [REDACTED].

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) benefit programs?

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 February 10, 2014, Claimant filed an application for MA/Retro-MA benefits alleging disability.
- (2) On September 12, 2014, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA.
- (3) On September 17, 2014, the Department notified Claimant that his application was denied.
- (4) On October 24, 2014, Claimant's authorized representative filed a request for a hearing to contest the Department's negative action.
- (5) Claimant has a history of seizures, chronic back and neck pain, cirrhosis of the liver, hepatitis C, a right torn rotator cuff, rhabdomyolysis, acute renal failure, sepsis, leukocytosis, uncontrolled hypertension, anemia, and depression.

- (6) Claimant is a 51 year old man whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 205 lbs. Claimant has a high school education.
- (7) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
- (8) Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
- (9) 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

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c). If the impairment, or combination of impairments, do not significantly limit

physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 416.920(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? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(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. 20 CFR 416.920(e).
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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #5-#8 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his mental impairments meet or equal Listing 12.04(A) and 12.04(B):

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

a. Anhedonia or pervasive loss of interest in almost all activities; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

- e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
- a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking; or
3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
- 1. Marked restriction of activities of daily living; or
 - 2. Marked difficulties in maintaining social functioning; or
 - 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 - 4. Repeated episodes of decompensation, each of extended duration;

On [REDACTED], Claimant was admitted to the hospital for a drug overdose. He had tachycardia, visual hallucinations and agitation. He was discharged on [REDACTED] in good condition.

On [REDACTED], Claimant underwent an internal medicine evaluation. Claimant was seen for alleged disability due to cirrhosis, chronic back pain, left shoulder pain, mental illness, right rotator cuff tear and hypertension. Claimant had been using a cane for the past year and a half, for his chronic back pain as well as his left knee pain. He stated he has chronic pain aggravated by standing, stooping, squatting, getting up, walking, lifting, bending, pushing, pulling and reaching. Claimant stated he does have a history of seizure like activity and loss of consciousness. He was taking Keppra and stated he was admitted in 2013 and has been admitted on four occasions, his last admission in 2014. He also stated he has a history of mental illness and is currently taking Paxil, Prozac and Buspar. He stated he has mood swings, anger, crying spells, sadness and suicidal thoughts, but no attempts. Claimant has a slight limp on the left side. Tandem walk, heel and toe walk were done very slowly. Impression: cirrhosis; chronic back pain; shoulder fracture; right rotator cuff tear; mental illness; hypertension; chronic back and knee pain.

On [REDACTED], Claimant underwent a mental status exam by the Department. The psychologist noted Claimant got a ride from his mother to the appointment. He did not remember the appointment on his own, as his mother helped him keep track of it. He said he needed a few minutes to figure out how to get to the office. He said he takes a bath or shower every day or two. Claimant presented as being in adequate over contact with reality with no evidence of an overt thought disorder. He appeared to be an accurate historian, without evident tendency to exaggerate or minimize symptoms. Claimant reported hearing things, hearing noises, last weekend, a hissing. He said he sees things as well, objects floating in the air. Claimant said he is mostly depressed these days. He is worried sick about what will happen to him if there is nobody to help him. Claimant was diagnosed with major depressive disorder, moderate, with reported psychotic features. Prognosis was fair. Claimant said he was psychiatrically hospitalized for a half day on a psychiatric ward one time. He is in outpatient treatment now, seeing a psychiatrist and a therapist. He has been going there for about five years.

On [REDACTED], Claimant's treating psychiatrist completed a Psychiatric/Psychological Examination Report on behalf of the Department. The psychiatrist noted Claimant appeared very sad and withdrawn. There was evidence of self-inflicted (as reported) on right inner forearm. Claimant said he cut himself with suicidal thoughts two weeks ago. Claimant appeared to be in pain. He sat stiffly and needed to stand and shift position frequently. This was reportedly due to a fall resulting in eight broken ribs, a broken shoulder in three places, and neck pain. Claimant cannot receive surgery due to hepatitis C and cirrhosis status. The psychiatrist indicated Claimant went for a routine physical in 2002 where he was diagnosed with hepatitis C and cirrhosis of the liver. The psychiatrist opined that this began a cycle of depression and physical symptoms increasing in severity to the point Claimant can no longer work. This deepens his depression. He feels suicidal at least twice a week and has trouble sleeping and concentrating. His focus is worse as he cannot remember what he has done from day to day. He isolates and has no friends, no interests and feels helpless.

The psychiatrist indicated Claimant struggled with short-term memory issues but displayed patience and fair logic. Psychomotor activity was fidgety at times, and his affect was congruent with his mood. The psychiatrist noted that Claimant's primary care physician diagnosed Claimant with night terrors and restless leg syndrome. Claimant has difficulty falling/staying asleep. Diagnosis: Axis I: Chronic depression; anxiety states; disturbance of cognitive learning; attention deficit disorder without mention of hyperactivity; Axis II: Deferred; Axis III: Hepatitis C; cirrhosis of the liver; chronic pain-broken ribs, broken shoulder, neck/back pain, rotator cuff; Axis IV: Primary support group, occupational problems, social problems, educational problems, economic problems, other psychosocial and environmental problems; Axis V: Current GAF= [REDACTED]

According to his Mental Residual Functional Capacity Assessment, Claimant was markedly limited in his ability to remember locations and work-like procedures; understand and remember one or two-step instructions; understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; work in coordination with or proximity to others without being distracted by them; make simple work-related decisions, 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; ask simple questions or request assistance, 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; travel in unfamiliar places or use public transportation and to set realistic goals or make plans independently of others. The psychiatrist opined the reliability and behavior of Claimant dealing with the described conditions are generally those which can render the person with a level of functional impairment that is below satisfactory standards of performance.

With regards to the Claimant's mental impairments, this Administrative Law Judge has carefully considered all the evidence of record in light of the requirements of sections 12.04 (affective disorders). The evidence shows Claimant's mental disorders satisfy the diagnostic criteria of the above listings (the so-called "paragraph A" criteria) and produce symptoms of listing-level severity (the so-called "paragraph B" criteria). To satisfy the "paragraph B" criteria, the mental impairments must result in at least two of the following: marked restriction of activities of daily living; marked difficulties in maintaining social functioning; marked difficulties in maintaining concentration; persistence, or pace; or repeated episodes of decompensation, each of extended duration. A marked limitation means more than moderate but less than extreme.

In activities of daily living, Claimant has mild restrictions. He has described mild limitations in activities of daily living. In particular, Claimant reported needing help remembering and focusing.

In social functioning, Claimant has marked difficulties. He reported feeling sad, isolating and suicidal thoughts at least twice a week. The treating psychiatrist noted that his ability to relate and interact with others, including coworkers and supervisors is markedly impaired. Based on the above evidence, Claimant has marked limitations in social functioning.

With regard to concentration, persistence or pace, Claimant has marked difficulties. He reported problems with concentration, focusing, memory, and task completion. The examining psychiatrist indicated Claimant's ability to understand, recall and complete tasks and expectations is markedly impaired, as is his ability to complete complex tasks and those that have multiple steps. His ability to maintain concentration is markedly impaired and he is unable to remember what he has done day to day. Claimant's treating psychiatrist opined that as a result of Claimant's emotional state, his reliability and behavior are generally those which can render the person with a level of functional impairment that is below satisfactory standards of performance.

As for episodes of decompensation, Claimant has experienced no episodes of decompensation of extended duration. Episodes of decompensation are defined as exacerbations or temporary increases in symptoms or signs accompanied by loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace (Section 12.00A(4), Part 404, Subpart P, Appendix 1). While there is evidence of at least two episodes of decompensation, they were not of an extended duration.

Because Claimant's mental impairments cause at least two "marked" limitations, the "paragraph B" criteria are satisfied.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA programs. Consequently, the Department's denial of his February 10, 2014, MA/Retro-MA application cannot be upheld.

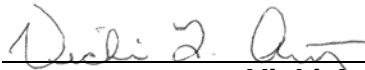
DECISION AND ORDER

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 eligibility purposes.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Claimant's February 10, 2014, MA/Retro-MA 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 January, 2016, 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 Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/8/2015**

Date Mailed: **1/8/2015**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

