

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

IN THE MATTER OF:



Reg. No.: 2014-13665
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: March 19, 2014
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 March 19, 2014, from Lansing, Michigan. Claimant, accompanied by his caregiver, personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

ISSUE

Whether the Department properly denied Claimant's application for State Disability Assistance (SDA) benefits?

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 August 2, 2013, Claimant applied for SDA.
- (2) On October 31, 2013, the Medical Review Team (MRT) denied Claimant's SDA for lack of duration. (Depart Ex. A, pp 171-172).
- (3) On November 5, 2013, the Department sent Claimant notice that his application was 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) upheld the denial of SDA benefits indicating the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days. (Depart Ex. B, pp 1-2).

- (6) Claimant has a history of hypertension, bipolar disorder and posttraumatic stress disorder.
- (7) Claimant is a 35 year old man whose birthday is [REDACTED].
- (8) Claimant is 6'2" tall and weighs 327 lbs.
- (9) Claimant completed high school and some college.
- (10) Claimant last worked for a home improvement company from 2003 to 2008.
- (11) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

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 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.

"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. [SDA = 90 day duration].

A set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921; 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.

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).

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 your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(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, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, 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 and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he has not worked since 2008. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with hypertension, bipolar disorder and posttraumatic stress disorder. It must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. Nevertheless, Claimant's impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3 the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment has been working in home improvement. The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 90 days or more and prevent him from performing the duties required from his past relevant employment for 90 days or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does have residual function capacity. 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.

On [REDACTED] Claimant presented to the emergency department for depression after he attempted to hang himself. No injury present. He had an abnormal mood and affect and appeared depressed. Claimant was admitted to observation for

the night to meet with social worker the following day. The next day, inpatient placement was recommended and Claimant was transferred to [REDACTED].

On [REDACTED], Claimant underwent a psychiatric evaluation with [REDACTED]. Claimant was reportedly hospitalized at [REDACTED] from [REDACTED] to [REDACTED] with a history of depression and suicidal attempt. Claimant stated he was trying to hang himself with a rope and his parents took him to the hospital. He stated that his depression is worse than before and his anxiety is also not getting any better. He stated that he has mood swings, insomnia, feelings of helplessness and hopelessness. He also admitted to racing thoughts, irritability and anger. He was having some conflicts with family members, especially his parents. He lived by himself. He reported being stressed out from financial reasons and dealing with his neck pain. The psychiatrist opined that Claimant was not in any acute physical distress. He was ambulatory and walked with a normal gait. He established eye contact. He spoke spontaneously and coherently. He got somewhat irritable and anxious at times. His mood was labile and he got tearful, especially when he talked about his past abuse issues. His thinking was goal oriented. His affect was appropriate to ideas expressed. He was alert and oriented times three. His memory was fairly adequate, but he had difficulty with short-term memory recall. His judgment was fair and he had some insight into his condition. Diagnosis: Axis I: Bipolar Disorder; Posttraumatic Stress Disorder; Axis III: Generalized pain; Axis IV: Occupational problems; Problem with primary support group; problem related to social environment; behavior/personality issues; Axis V: GAF=45.

On [REDACTED], Claimant presented to the emergency department with a large abrasion to his forehead, complaining of having fallen. There were no indications for imaging. No loss of consciousness. He was discharged in stable condition.

On [REDACTED], Claimant presented to the emergency department reporting having been assaulted. Claimant was alert, anxious and in moderate acute distress. Chest and pelvic x-rays were negative. CT of the cervical spine, chest and abdomen showed no acute disease. Claimant was diagnosed with a closed head injury with loss of consciousness; multiple abrasions to the face and a nasal fracture. Claimant's blood alcohol level was 0.229.

In February, 2013, Claimant presented to the emergency department with right rib and abdominal pain. Claimant stated he was assaulted a week ago and was in observation. He refused pain medication on discharge. The physician noted Claimant had similar symptoms before. Claimant reported he was a smoker and occasionally used alcohol. The physician indicated Claimant appeared to be in pain and in mild distress. He had a moderate muscle spasm of the right and left posterior neck and moderate tenderness in the right side of the abdomen. Chest x-ray showed no acute disease. CT's of the head and neck revealed no acute disease processes. He was discharged in stable condition with a diagnosis of clinical rib fracture and neck, chest wall and abdominal wall spasms.

In April, 2013, Claimant's treating physician completed a medical examination of Claimant on behalf of the Department. Claimant was diagnosed with chronic neck pain and hypertension. The treating physician indicated Claimant's condition is stable,

although he was in a hostile mood and confrontational during the exam. The physician noted Claimant has no physical limitations and is able to meet his own needs in the home.

In April, 2013, Claimant's treating psychiatrist completed a psychiatric evaluation on behalf of the Department. Claimant's psychiatrist opined that Claimant is able to live and function independently. He is taking care of his basic physical needs. Diagnosis: Axis I: Bipolar Disorder; Posttraumatic stress disorder; Axis III: History of neck injury; Axis IV: Moderate; Axis V: GAF=50. According to his Mental Residual Functional Capacity Assessment, Claimant had no marked limitations in understanding and memory, sustained concentration and persistence, social interaction or adaptation.

In November, 2013, Claimant underwent a psychological evaluation to clarify his intellectual and personality functioning. Claimant has a history of alcoholism. He has not had a drink in approximately three to four months. He has had six attempted suicides, one hospitalization in December of 2012. Based on the Minnesota Multiphasic Personality Inventory, Claimant may be more distressed or disturbed than he is willing to admit by way of testing. His profile reflects a socially introverted individual experiencing severe depressive moods as well as very high anxiety. This depression is likely to be chronic and embedded deeply within the personality structure. He has a tendency to be excitable, irritable and over-react to environmental stimuli. His behavior is likely to be described as unpredictable. He is very demanding in an egocentric way for attention, affection and sympathy. He has a tendency to express his feelings in behavior. He seeks to control situations. He is opposed to delaying gratification. Although he is currently suffering emotional distress, he gives indication of psychological resiliency. When not distressed, he is likely to be more verbal and relatively more at ease in social situations. During this time he is able to deal with adverse circumstances if given sufficient support. Diagnosis: Major Depression and Bipolar Disorder, depressed.

In March, 2014, Claimant was discharged from the emergency department with a diagnosis of neck sprain, lumbar sprain and left knee sprain.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light duties. Therefore, the Administrative Law Judge finds that Claimant failed to provide the necessary objective medical evidence to establish that he is mentally or physically incapable of doing basic work activities. Moreover, there is no evidence that Claimant has a severe impairment that meets or equals a listed impairment found at 20 CFR, Part 404, Subpart P, Appendix 1.

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).

Claimant testified that he has owned his own home improvement business for five years, from 2003 to 2008. Claimant testified that his daily pain is at a 10 and the pain medications he has been given do not work. He stated he can walk 100 yards, stand for 5-10 minutes, sit for 30-45 minutes and pick up and carry 25 pounds. During the hearing, Claimant denied drinking or smoking. He also described his typical day as getting up, showering, napping and going grocery shopping with his neighbor.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). 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 disabled.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows he can perform light work. Under the Medical-Vocational guidelines, a younger individual age 18 - 49 (Claimant is 35 years of age), with a high school education and an unskilled work history is not considered disabled pursuant to Medical-Vocational Rule 202.18. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

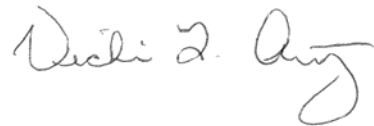
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's application for State Disability Assistance benefits.

Accordingly, the Department's decision is **AFFIRMED**.

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 2, 2014

Date Mailed: April 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:

