

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-3831
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 25, 2014
County: Oakland-04

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 February 25, 2014, from Lansing, Michigan. Claimant 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 Medical Assistance (MA) and Retro-MA 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 April 1, 2013, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On September 17, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating Claimant was capable of other work based on his non-exertional impairment. (Depart Ex. A, pp 1-2).
3. On September 20, 2013, the department caseworker sent Claimant notice that his application for MA/Retro-MA had been denied.
4. On October 7, 2013, Claimant filed a request for a hearing to contest the department's negative action.

5. On November 15, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and he retains the capacity to perform unskilled work. (Depart Ex. B).
6. Claimant was last denied two years ago and had not reapplied for Social Security disability benefits at the time of the hearing.
7. Claimant is a 45 year old man whose birthday is [REDACTED]. Claimant is 5'8" tall and weighs 150 lbs.
8. Claimant does not have an alcohol, nicotine or drug problem.
9. Claimant has a driver's license and is able to drive.
10. Claimant has a high school education.
11. Claimant has been working on-call part-time since October, 2013, averaging 24 hours a week at \$ [REDACTED] an hour.
12. Claimant alleges disability on the basis of a rod in his left leg, an irregular heartbeat, anxiety and depression.

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).

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). 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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.

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 applicant 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).

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 an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can 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 to 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity, but testified that he has been working part-time on call approximately 24 hours a week for \$8.30 an hour since October, 2013. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR

916.920(b). 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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *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). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to a rod in his left leg, an irregular heartbeat, anxiety and depression.

In March, 2011, Claimant underwent an internal medicine examination by the [REDACTED]. Claimant was diagnosed with a gunshot wound to his left femur, posttraumatic degenerative joint disease of the left hip and knee, pterygium with no significant encroachment on the cornea and hypothyroidism.

In March, 2011, Claimant underwent a psychiatric evaluation by the [REDACTED]. The examining psychiatrist noted Claimant started his complaints by stating that he has difficulty coping with society since he was released from prison in August, 2009. Claimant described symptoms of depression as well as paranoia, anxiety and hearing voices. He was seeing a psychiatrist and was prescribed psychotropic medications. He had some problems with memory, calculations, abstract thinking, similarities and differences. Diagnosis: Axis I: Major Depressive Disorder; Generalized Anxiety Disorder; Axis III: Vision problems; Pterygium in the left eye;

Hypothyroidism; History of gunshot wound to the left femur; Axis IV: Other psychosocial and environmental problems; Axis V: GAF=50. The psychiatrist opined Claimant's prognosis was guarded and he needed continued treatment and support services.

In October, 2011, an orthopedist opined that Claimant has difficulty standing on left leg longer than 30 minutes and would likely do well with a sit down job.

In April, 2013, Claimant underwent a psychiatric evaluation by [REDACTED] [REDACTED] Diagnosis: Axis I: Mood Disorder; Axis IV: Problem accessing healthcare, educational problems, occupational problems, problem related to social environment and other psychosocial and environmental problems; Axis V: GAF=60.

In July, 2013, Claimant underwent an independent psychological evaluation. The examining psychologist reported Claimant has served 18 years in prison on a drug charge. He is now on parole. He has no work skills. He is having a difficult time adapting to society. He has tried to get a job but it has been difficult for him. It appears he wants to better his life but lacks the resources to do so. He is riddled with guilt feelings, low self-confidence, anxiety and worry. He fits the profile of most parolees who have spent a lot of time in prison. It appears that once he has some type of work skills and he feels stable and productive, he may feel more confident about himself. Diagnosis: Axis I: Adjustment Disorder with anxiety; Axis IV: Psychosocial stressors; difficulty finding a job, lack of work skills, on transition to society, lack of stable place and finances, inability to care for infant; GAF=56. The psychologist opined that Claimant has the ability to relate to friends, coworkers and employers as long as he feels accepted. His ability to understand, remember, carry out simple, repetitive and tangible tasks is within normal limits. His ability to maintain attention, concentration, persistence and pace to perform routine tasks is mildly impaired if he has to complete a job within a time limit. His mental ability to withstand stress and pressures associated with a day-to-day work activity is markedly impaired because of his lack of work skills. He has the mental ability to manage his own funds. His prognosis is hopeful as long as he feels productive and accepted. According to his Mental Residual Functional Capacity Assessment, Claimant was markedly limited in his ability to maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; sustain an ordinary routine without supervision; make simple work-related decisions; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; 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. Claimant testified he spent 18 years in prison and was released in 2010. He stated he has been depressed in trying to acclimate himself to society and is not on anti-depressants. He testified he is able to walk one to two blocks, stand for a few hours and lift between 40 and 50 pounds. He stated that he was not in any pain and the only medication he takes is Lisinopril. He testified a doctor has told him he can work, but with restrictions. Claimant also testified that he has been working part-time since October, 2013.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). ***There is no objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment that has lasted or is expected to last at least 12 months, consecutively. While Claimant does appear to suffer from depression or a mood disorder, he has not been taking psychotropic medications and has been working steady since October, 2013. Therefore, Claimant is denied at Step 2 for lack of a severe impairment and no further analysis is required.***

Claimant has not presented the required competent, material and substantial evidence which would support a finding that Claimant has a severe impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for 12 months in a row. 20 CFR 416.920(c); 20 CFR 404.1521. 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 disability. While Claimant had some medical evidence in the record, it was all prior to July, 2013, and he began working in October, 2013, so little weight was given to the old psychological evaluations. Claimant's testimony was given the most weight because it was the most recent. Moreover, Claimant's failure to reapply for social security since being denied two years ago leads this Administrative Law Judge to find that Claimant does not believe himself to be disabled. Therefore, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

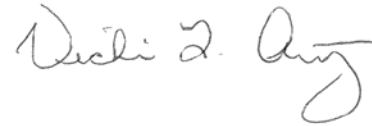
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance and Retroactive Medical Assistance.

DECISION AND ORDER

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

Accordingly, the department's determination is **AFFIRMED**.

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. 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

2014-3831/VLA

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:

