

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-5041
Issue No.: 2009; 4009
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 commenced on February 25, 2014, from Lansing, Michigan. Claimant, accompanied by his wife, 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), Retro-MA and State Disability Assistance (SDA) 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 June 20, 2013, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
2. On September 19, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating he was capable of other work based on the non-exertional impairment. SDA was denied for lack of duration. (Depart Ex. A, pp 1-2).
3. On September 23, 2013, the department caseworker sent Claimant notice that his application for MA/Retro-MA and SDA had been denied.
4. On October 8, 2013, Claimant filed a request for a hearing to contest the department's negative action.

5. On December 9, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform medium work. (Depart Ex. B, pp 1-2).
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 55 year old man whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 140 lbs.
8. Claimant does not have an alcohol or drug history. Claimant stated he had just stopped smoking three days before the hearing.
9. Claimant has a driver's license and is able to drive.
10. Claimant has a high school equivalent education.
11. Claimant is not currently working. Claimant last worked in June, 2011.
12. Claimant alleges disability on the basis of bipolar disorder, hearing loss, asthma, cervical disc disorder, lumbar disc disorder, allergies, anxiety, depression and migraines.
13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
14. 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

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).

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 Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (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.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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.

The federal regulations require that several considerations be analyzed in sequential order:

. . . We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f)?
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

. . . You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

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

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e). You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not ineligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). In this case, the Department found Claimant unable to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

The medical information indicates that Claimant suffers from bipolar disorder, hearing loss, asthma, cervical disc disorder, lumbar disc disorder, allergies, anxiety, depression and migraines.

Claimant testified credibly that he has limited tolerance for physical activities and is unable to walk or stand for lengthy periods of time. Claimant stated he has hearing problems, three herniated discs in his neck and degenerative disc disease in his lumbar spine. He has had 4 psychiatric hospitalizations back in the 1990's and needs to see a psychiatrist for a medication review.

In February, 2013, Claimant's past treating psychologist completed a psychological assessment of Claimant. Diagnoses: Axis I: Bipolar Disorder; Posttraumatic Stress Disorder; Probable CHI or Post-Concussive Syndrome (Dementia due to head trauma); Axis II: Obsessive/Compulsive Personality Disorder; Axis III: Thyroid dysfunction; Closed head injury; Arthritis; Chronic and Severe Neck and Back pain syndrome; Axis IV: Severe occupational, health and financial stressors; psychosocial stressors; Axis V: GAF=50. Prognosis is poor. The psychologist opined that based on Claimant's long-standing history as well as current functioning indicates a severe Bipolar I disorder; Post-Concussive Closed Head Injury and PTSD, which clearly render him incapable of maintaining gainful employment any time. He cannot handle anything other than the most minimal physical or mental stress. His mental condition is far too unstable both cognitively and emotionally for him to cope with any self-support or employment. He is barely able to maintain his activities of daily living and self care and he remains at high risk. He clearly requires immediate intensive psychological and psychiatric assistance, intervention and reevaluation of his psychotropic medications. He should be considered totally and permanently disabled.

In March, 2013, a [REDACTED] MA, LLP, Clinical and Forensic psychology examined Claimant on a referral from the [REDACTED]. [REDACTED] noted that Claimant carries a past diagnosis of Bipolar Disorder and he was presented with questions of behaviors and symptoms of Bipolar Disorder. According to [REDACTED], Claimant's responses did not sufficiently meet DSM-IV criteria for Bipolar Disorder. [REDACTED] also found that Claimant did not endorse DSM-IV criteria for PTSD. [REDACTED] opined that it was reasonable to conclude that Claimant suffers from Major Depressive Disorder, based upon his history of hospitalizations and treatments. Claimant also alluded to an early history of cocaine abuse and polysubstance abuse; however these were not included in the diagnoses proffered by Claimant's psychologist in February, 2013, for a number of possible reasons: they may have been resolved; omitted; or not a substantial part of his treatment focus at the time. A treating physician may often introduce a "halo effect" on behalf of their patients, which would render additional supplemental clinical information invaluable in corroborating the claimant's allegations. Claimant did not display symptoms other than what he reported (by history); therefore, more information available to this examiner would be necessary to provide a diagnosis based upon objective evidence. Based on the one and a half page report, and since [REDACTED] is clearly not a physician, his opinion is given no weight.

On [REDACTED] Claimant's treating physician completed a Physical Residual Functional Capacity Questionnaire on behalf of Claimant. The physician has been treating Claimant since May, 2010. Claimant has cervical lumbar degenerative disc disease. He also wears hearing aids. The physician opined Claimant's prognosis is poor and guarded. Claimant has multiple joint problems, low back pain, fatigue, problems concentrating, joint pain, migraines, confusion and temporomandibular joint

disorder. His cervical and lumbar spine is tender to the touch. He has spinal stenosis and decreased range of motion. The physician opined that Claimant was incapable of even low stress jobs based on his depression, anxiety and chronic back and neck pain. He can barely walk a block. He can sit for 15 minutes, stand for 10-15 minutes and sit, stand and walk less than 2 hours of an 8-hour workday. The physician indicated that Claimant has significant limitations in doing repetitive reaching, handling and fingering. He is also deaf in his left ear and hard of hearing in his right. He also has problems with comprehension, memory, sustained concentration and social interaction. Based on the MRI, Claimant's treating physician opined that Claimant's condition is deteriorating and Claimant cannot work anymore.

After careful review of Claimant's medical records and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Moreover, his treating physician and previous treating psychologist both opined that Claimant is disabled. Because Claimant's treating physicians' opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

The Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

Based on Claimant's vocational profile (advanced age, Claimant is 55, has a high school equivalent education and a skilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA and SDA benefits are approved using Vocational Rule 201.06 as a guide. Consequently, the department's denial of his June 20, 2013, MA/Retro-MA and SDA application cannot be upheld.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

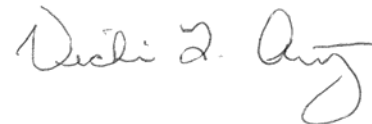
DECISION AND ORDER

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 and SDA eligibility purposes.

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

1. The department shall process Claimant's June 20, 2013, MA/Retro-MA and SDA 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 March, 2015, 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 L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 12, 2014

Date Mailed: March 12, 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:

