

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016374
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: January 21, 2015
County: Kent-District 1

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 21, 2015, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator [REDACTED] and Family Independence Manager [REDACTED].

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) 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 April 3, 2014, Claimant applied for SDA.
- (2) On September 30, 2014, the Medical Review Team (MRT) denied Claimant's SDA for lack of duration.
- (3) On September 30, 2014, the Department sent Claimant notice that his application was denied.
- (4) On November 12, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
- (5) Claimant has a history of asthma, bipolar disorder, anxiety, depression and insomnia.
- (6) Claimant is a 46 year old man whose birthday is [REDACTED].
- (7) Claimant is 5'7" tall and weighs 215 lbs.

- (8) Claimant has an eighth grade education.
- (9) Claimant last worked in 2013.
- (10) Claimant was awaiting the decision from his Social Security disability hearing held on December 3, 2014, at the time of this hearing.

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 State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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 2013. 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 asthma, bipolar disorder, anxiety, depression and insomnia. 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 as a truck mechanic, landscaping, truck driver and janitor. 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 underwent a psychiatric evaluation. The psychiatrist noted Claimant was a very difficult historian, as he gave a convoluted history and was not clear when relating details. He was dismissive and seemed to exaggerate his inability to relay information. He presented with non-specific mood complaints. He reported being hospitalized numerous times but when tediously reviewed historically he in fact was in emergency rooms on five occasions for taking excessive amounts of his prescribed medications and abusing alcohol concurrently to the point of needing to be charcoaled. Most of those episodes did not result in psychiatric hospitalizations but he was hospitalized at least once and possibly twice since 2011. In the ER on [REDACTED] he tested positive for cocaine on a urine drug screen but he denied using for at least three months prior which further substantiated his unreliable history. He denied specific depressive symptoms. He denied mania but he wanted treatment for his bipolar, ADHD and high anxiety. He stated he had difficulty sleeping and could not function at work due to poor concentration and memory. The psychiatrist indicated it was unclear as to

why Claimant was unable to obtain employment of any kind or that he had been looking for work. The psychiatrist observed Claimant was well-nourished and in no acute distress. He was calm to interview. His speech was monotone. His psychomotor activity was within normal limits. He displayed good eye contact. He was clear, goal-directed, with no psychotic symptoms and no gross cognitive deficits were noted. His mood was mildly depressed. His affect was constricted but appropriate. Diagnosis: Axis I: Mood disorder; Axis II: diagnosis deferred; rule out antisocial personality disorder; Axis III: hypertension, GERD, possible seizure disorder; Axis IV: other psychosocial and environmental problems; Axis V: GAF= [REDACTED]

On [REDACTED], Claimant underwent a psychiatric evaluation. Claimant had a past history of hospitalization in [REDACTED] in 2011 when he overdosed on Flexeril and Paxil. He was also hospitalized in 2008 at [REDACTED]. He was on alcohol and cocaine and contends he has not touched alcohol for two years. He was in the ER five times for taking excessive prescribed medication, abusing alcohol to the point of needing to be charcoaled. The psychiatrist indicated Claimant was flat and dull, stating he needed the medication for his mood swings. He denied the role of substance abuse in them. Diagnosis: Axis I: bipolar disorder; polysubstance/psychoactive dependence; Axis II: deferred; Axis III: History of seizure disorder and asthma; Axis IV: other psychosocial and environmental problems; Axis V: GAF= [REDACTED]

On [REDACTED], Claimant underwent an initial psychiatric evaluation at the Cherry Street Health Center. He was seen for follow-up at [REDACTED] Hospitalization for bipolar disorder depression and ADHD. He was previously at Forest View in 2011. He also experiences social anxiety. He endorses benefit of medication and denies side effects from the medication. He reported suicide attempts in 1987, 1989, 1996, twice in 2006, 2007, and 2011. He has a history of alcohol abuse. Diagnosis: Axis I: Bipolar disorder; generalized anxiety disorder; other and unspecified alcohol dependence, unspecified drinking behavior; Axis IV: Moderate; Axis V: GAF= [REDACTED]

On [REDACTED], Claimant underwent a psychological evaluation on behalf of the Department. Claimant described his condition as "mental health, my anxiety, suicidal, depression, ADHD, and bipolar and sleep insomnia." He reported since a hospitalization at Forest View in 2011, when medications were introduced, he has typically been sleeping eight hours per day. A moment later he indicated that with medication he has been sleeping four hours per night. Later in the interview, he stated that even with benefit of medication, he has been sleeping one to two hours per night. Without medications, Claimant perceives himself as "I'd be suicidal. I'd be angered and mad. Nice one minute, snap the next." In regard to medical conditions, Claimant reports asthma, bronchitis, and headaches. Ambulation was good. Speech was normal. Clothing was clean and appropriate to weather. Hygiene was intact. Attitude was pleasant and cooperative. Intelligence appeared average. Stream of mental activity was spontaneous and organized. He was friendly, yet somewhat anxious. He was oriented to person, place and time. Diagnosis: Bipolar disorder; Social anxiety disorder with panic features and ADHD. The psychologist opined Claimant prognosis is good. Claimant describes improvement of function with the benefit of his current psychotropic medications. Nonetheless, the depression episodes occur once or twice per month and endure for one week periods. During those times, he experiences significant insomnia

and heightened irritability. In regard to mental status, his current symptom severity is judged to preclude Claimant from employment during depression episodes.

According to his Mental Residual Functional Capacity Assessment of October, 2014 completed by a social worker, Claimant was markedly limited in his ability to remember locations and work-like procedures; 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; sustain an ordinary routine without supervision; work in coordination with or proximity to others without being distracted by them; 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; interact appropriately with the general public, 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.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light duties. This decision is based on the conflicting views of the psychiatrists and psychologists who have evaluated Claimant over the years as shown above.

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. 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. 20 CFR, Part 404, Subpart P, Appendix 1.

Accordingly, 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 46 years of age), with an eighth grade education and an unskilled work history is not considered disabled pursuant to Medical-Vocational Rule 202.10. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

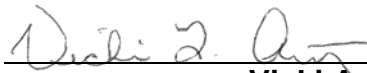
The Department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 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.

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 Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/9/2015**

Date Mailed: **2/9/2015**

VLA/las

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:

