

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

SOAHR Docket No. 2009-16128 REHD
DHS Reg. No. 2008-15512

██████████,

Claimant

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order of Reconsideration granted on November 8, 2006.

ISSUE

Did the Administrative Law Judge err when he determined the Claimant was not eligible for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 February 3, 2009, Administrative Law Judge Landis Y. Lain issued a Hearing Decision in which the ALJ affirmed the Department of Human Services' (DHS or Department) denial of Claimant's June 11, 2008, application for MA-P and SDA.
- (2) On March 5, 2009, the State Office of Administrative Hearings and Rules (SOAHR) received a request for Rehearing/Reconsideration submitted by the Claimant's representative, ██████████.
- (3) On July 13, 2009, SOAHR granted the Claimant's request for reconsideration and issued an Order of Reconsideration.
- (4) Findings of Fact 1-11 from the Hearing Decision, mailed February 4, 2009, are hereby incorporated by reference.

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 Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 4000.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.50, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education, and work experience. 20 CFR 416.920(c).

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

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

...Medical reports should include –

- (1) Medical history;
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)...20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitude necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, 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).

The Residual Functional Capacity (RFC) is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated....20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the [REDACTED], published by the [REDACTED]... 20 CFR 416.967.

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability... 20 CFR 416.994(b)(4)(iv).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source’s statement of disability... 20 CFR 416.927(e).

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

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

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3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, §§ 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

The ALJ correctly found the Claimant not ineligible for disability at Step 1 because Claimant has not worked or been engaged in substantial gainful activity since May, 2008. As noted in the Hearing Decision, the Claimant filed his disability application for Medical Assistance and State Disability Assistance on June 11, 2008 (*Hearing Decision*, Finding of Fact 1).

Because the Claimant was not engaged in substantial gainful activity at the time of his application, and has not since done so, the ALJ was, as previously noted, correct in proceeding to Step 2 of the disability analysis.

The Claimant's DHS 49-D form, completed by [REDACTED] on March 26, 2007, diagnosed the Claimant with obsessive compulsive disorder, and bipolar I disorder with a most recent mixed episode, and a GAF score of 60.

On January 4, 2008, the Claimant was treated by [REDACTED] who noted that the Claimant had diagnoses of obsessive compulsive disorder, bipolar disorder with a most recent mixed episode, and a GAF score of 60. It was also noted that the Claimant was on probation, but "returned to drinking and medication non-compliance" when the probation ended. Department exhibit pp. 43-50.

On June 6, 2008, the Claimant underwent x-rays of the chest and right ribs. [REDACTED] certified the scans as normal. Department exhibit p. 14.

On June 12, 2008, the Claimant was evaluated by [REDACTED] who diagnosed the Claimant with major depression and psychotic features. [REDACTED] analysis excluded OCD and mood disorder due to alcohol dependence. [REDACTED] also noted that

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Claimant had a possible cirrhotic liver due to severe alcoholism. The Claimant had a GAF score of 48. Claimant's exhibit pp. 26-27.

On June 14, 2008, the Claimant was treated at [REDACTED] – in the emergency department by [REDACTED] after being involved in a car accident. The Claimant was diagnosed with a head wound which was noted not to be serious. Department exhibit p. 15-16.

On June 25, 2008, the Claimant underwent chest x-rays which were interpreted as normal by [REDACTED] Department exhibit p. 24.

On August 15, 2008, the DHS Medical Review Team (MRT) denied the Claimant's application for MA-P because of a lack of duration and severity. SDA was denied by the MRT because the mental and physical impairment was not expected to prevent employment for 90 days or more. *Hearing summary.*

On September 18, 2008, the State Hearing Review Team (SHRT) denied the Claimant's application for MA-P, retro MA-P, and SDA, stating that the Claimant was capable of performing a wide variety of work. *SHRT Decision.*

The Claimant's DHS 49-D form, completed by [REDACTED] on October 30, 2008, diagnosed the Claimant with bipolar disorder and obsessive compulsive disorder. The Claimant's GAF score was noted to be 45.

On November 13, 2008, the Claimant was admitted to [REDACTED] with complaints of severe depression and suicidal ideation. [REDACTED] diagnosed the Claimant with bipolar disorder, with a most recent episode of depressed type with psychotic features. [REDACTED] also noted a history of polysubstance abuse and attention deficit hyperactivity disorder. [REDACTED] noted a GAF score of 25. Claimant's exhibit pp. 41-42.

On January 20, 2009, after the Claimant had submitted new evidence, SHRT denied Claimant's application, stating that Claimant was capable of performing other unskilled work, and had drug and alcohol addiction which was material to the finding of disability.

The Claimant has presented very little acceptable medical evidence of physical impairments that could be used as evidence of disability. The evidence presented includes some evidence of complaints of liver problems, including a possible cirrhotic liver. However, beyond this evidence, there is little to suggest that Claimant's physical impairments meet the durational or severity requirements at Step 2. However, the Claimant's mental impairments require more analysis.

The Claimant's mental impairments consist of bipolar I and bipolar II disorders with different types of episodes and psychotic features. The Claimant was also diagnosed

with obsessive compulsive disorder and a history of attention deficit disorder. The Claimant's GAF scores range from moderate to low.

When determining the severity of mental impairments, GAF scores are often of little value. The Diagnostic and Statistical Manual of Mental Disorders (DSM)–IV indicates at p. 34 that a GAF score of 41-50 indicates “serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social occupations or school functioning (e.g. no friends, unable to keep a job) (emphasis added).” In order to get to Step 3 of the sequential analysis, all claimants at Step 1 must not be gainfully employed. Given this fact, all claimants at step 3 of the sequential analysis who are not gainfully employed and have an Axis I or Axis II diagnosis, regardless of its severity, would be given a GAF score of less than 50. According to the GAF scale definitions, a claimant who is unable to keep a job would have a serious occupational impairment and a GAF score of 31 to 40. The DSM–IV further provides:

In most instances, ratings on the GAF Scale should be used for the current periods (i.e., the level of functioning at the time of the evaluation) because ratings of current functioning will generally reflect the need for treatment or care. In order to account for day – to day variability in functioning, the GAF rating for the “current period” is sometimes operationalized as the lowest level of functioning for the past week.

DSM–IV p. 33.

The DSM-IV instructions for mental health professionals indicate that the GAF score is indicative of the Claimant's level of functioning only at the time of the evaluation. The GAF scoring instructions also indicate that a GAF score represents, in most instances, the Claimant's general functioning level at a specific point in time and is only valid for the “current period.” See DSM- IV p. 33. Because the Claimant's GAF score is only an indicator of the Claimant's mental condition or job status at the time of the evaluation, the GAF score is not designed to reflect day to day variability, and may not be used as the sole basis to find that the Claimant's mental condition is severely limiting for 12 months or more. A GAF score indicates only that the evaluator may have found a serious impairment, as defined by the GAF scale, but does not mean that the evaluator has found a serious impairment as defined by federal regulations with duration of 12 months or more.

The sequential analysis required for SSI disability determinations, at Step 1 directs a decision of not disabled for persons who are substantially gainfully employed. If a Claimant is substantially gainfully employed, a determination of his disability at Step 2 is not required. Given this, all Claimants at Step 2 would score either in the 21-30 range on the GAF scale if they have “no job”, 31 to 40 if they are “unable to work”, or 41-50 if they are “unable to keep a job.” Therefore, unless the objective medical evidence

provided includes non-GAF score evidence of a serious mental impairment, the GAF score is of little value to the adjudicator when determining the effect of the Claimant's mental limitations on the Claimant's ability to perform basic work at Step 1 or at Step 3 when determining whether or not the Claimant's impairments meet or equal a listing.

While the value that can be attributed to a GAF score in making a disability determination under the sequential analysis is questionable, Claimant's medical evidence of mental impairments is more substantive. As previously mentioned, Claimant has presented medical evidence of bipolar I and II disorder with varying episodes and psychotic features, along with obsessive compulsive disorder and attention deficit disorder. The evidence, which includes Claimant's sometimes suicidal and homicidal ideation, is substantial enough for this Administrative Law Judge to conclude that Claimant's mental impairments are severe in that they would prevent Claimant from being able to engage in basic work activities.

Furthermore, these impairments are well documented over an extensive period, thereby meeting the durational requirement of 12 months. Thus, this Administrative Law Judge finds Claimant disabled at Step 2.

However, where a Claimant is found disabled and there is medical evidence of drug addiction or alcoholism that is a materially contributing factor to the claimant's disability, the Claimant will be determined ineligible for disability benefits per 20 CFR 416.935.

In the instant case, there is medical evidence that Claimant engages in reasonably severe alcohol abuse. In one medical opinion, it is noted that Claimant's alcohol abuse may be a factor in causing symptoms similar to those of obsessive compulsive disorder or mood disorder. Department exhibit pp. 43-50. Furthermore, another medical opinion makes a suggestion linking Claimant's alcohol abuse to non-compliance with prescription medication instructions.

Although such evidence exists and alcohol abuse is undoubtedly an issue the Claimant must deal with, the bulk of the medical evidence presented maintains a showing of a set of extended severe impairments which do not vary with differing uses of alcohol and are not generally attributable to alcohol abuse.

Therefore, this Administrative Law Judge finds that Claimant is disabled at Step 2 and that substance abuse is not a materially contributing factor to Claimant's disability. Because Claimant is found disabled, there is no need to continue the sequential analysis. 20 CFR 416.920(c).

Claimant also applied for State Disability Assistance or SDA in the instant case. That program, which also provides financial assistance to disabled persons, is administered by the Department of Human Services pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative

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Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM). Per PEM 261, a person is disabled for SDA purposes if he/she:

- Receives other specified disability-related benefits or services; or
- Resides in a qualified Special Living Arrangement Facility; or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Because Claimant is disabled for the purposes of obtaining Medical Assistance, he is also medically eligible for State Disability Assistance pursuant to PEM 261.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge erred in finding that the Claimant was not disabled.

IT IS THEREFORE ORDERED that:

The Administrative Law Judge's decision mailed February 4, 2009, is REVERSED.

The Department is directed to determine the Claimant's non Medicaid eligibility for MA-P and SDA effective June 2008.

/s/

Martin D. Snider
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

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Date Signed: August 28, 2009
Date Mailed: August 31, 2009

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.