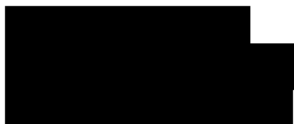


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201131378
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 20, 2011
Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 20, 2011 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA) benefits on the basis that Claimant is not a disabled individual.

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 1/25/11, Claimant applied MA benefits (see Exhibits 38-23).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 3/15/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 22-20)
4. On 3/23/11, DHS denied Claimant's application for MA benefits (See Exhibits 40-39).
5. On 4/13/11, Claimant requested a hearing disputing the denial of MA benefits.

6. On 5/17/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 55-54).
7. As of the date of the administrative hearing, Claimant was a 46 year old male (DOB 1/2/65) with a height of 5'10" and weight of 175 pounds.
8. As of the date of the hearing, Claimant has no relevant history of tobacco but in 2006 participated in a substance abuse program for alcohol.
9. Claimant's highest education year completed was 12th grade (GED obtained).
10. Claimant had no medical coverage since an unspecified time in the 1990s, though is receiving help from family in obtaining prescriptions.
11. Claimant claimed to be a disabled individual based on mental impairments of depression and schizophrenia.

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). DHS (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 3/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

It should be noted that the presented exhibits were presented in reverse order. This resulted in the exhibits being numbered from high number to low number.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.*

Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories. It was not disputed that Claimant's only potential category for Medicaid would be as a disabled individual.

Disability is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

It was not disputed that none of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 nearly identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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

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416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927.

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has

been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

In determining whether Claimant's impairments amount to a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by reviewing Claimant's medical documentation.

Claimant presented documentation of his daily activities (Exhibits 5-1). Claimant noted suffering from racing thoughts and an inability to maintain sleep. He stated that he can fix his own meals but referenced a loss of weight and appetite. Claimant also stated he can wash dishes and perform basic cleaning. Claimant also indicated he suffers from memory loss which causes him to not remember to do things. Claimant noted he visits his parents for three hours per week. Claimant also noted he suffers from psychotic behaviors and episodes.

Claimant's treating source therapist submitted a psychological examination (Exhibits 11-6). The report noted an incident from 2008 whereby Claimant heard voices from his neighbor's dog which caused Claimant to kill the dog. The incident resulted in a two year prison sentence where Claimant began taking medication to help him with his depression.

Two suicide attempts were noted. One attempt occurred in 2007 and a second in 2008. Claimant stated he attempted to overdose on medications on both occasions.

Claimant was examined and found to be normal in most categories including: grooming, attitude, affect, psychomotor activity, thought process, attention, judgment and impulse control. Claimant's mood was noted as anxious and dysphoric.

The examiner diagnosed Claimant with a primary diagnosis of schizoaffective disorder and a secondary diagnosis of anxiety disorder. Claimant was given two current GAF scores of 45 and 50. The Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV) describes GAF as a scale used by clinicians to subjectively rate the social, occupational, and psychological functioning of adults. A score within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

Case notes from the examining physician reveal Claimant was prescribed several medications for his mental issues. Claimant was prescribed Remeron (30 mg) to help with dysphoric mood, Elavil (75 mg) to assist Claimant with falling asleep and Neurontin (300 mg @ 3/day) to reduce anxiety and pain and to help stabilize Claimant's mood.

Claimant's Assistance Application was presented as Exhibits 38-23. The only notable medical statement it contained was that Claimant listed the following medical conditions: depression, bipolar, anxiety and voices.

On 2/24/11, Claimant was psychologically examined by a DHS referred physician (see Exhibits 49-46). Claimant was described as having "moderate to severe functional impairment for occupational activity" due to Claimant's depression and panic disorder. Claimant was specifically diagnosed as having a recurrent major depressive disorder with psychotic features in partial remission and a chronic panic disorder. The examiner concluded the impairments interfered with Claimant's ability to interact with the public, with potential coworkers and family. It was suspected that the pressure of employment could result in decompensation.

Claimant was assessed a GAF of 55. A score of 55 is representative of a person with "moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers)".

Documents were also presented from a psychological examination by Michigan Department of Corrections (MDOC) (Exhibits 53-50). Claimant was assessed a GAF of 75 on 3/24/10. Such a score is described as "If symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in schoolwork)."

The examiner noted "given Claimant's mental diagnosis, it is unlikely he will be discharged from OPMH during his stay at MDOC". The undersigned was perplexed why the examiner thought Claimant's mental state unstable enough to justify discharge from some unspecified mental treatment but assessed a GAF score representative of relatively slight mental impairment. The MDOC report was also based on the oldest psychological examination. Based on the date of the examination and the seemingly contradictory conclusions, the undersigned is not inclined to give this report much weight.

Claimant's ability to socialize was questioned as was Claimant's ability to perform under the pressures of employment. Such obstacles would greatly affect Claimant's ability to perform basic work activities. There was no indication that the impairment would

improve sufficiently to not meet the 12 month durational requirement. It is found that Claimant established suffering from a severe impairment based on his mental impairments. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If the claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant established a severe impairment based on depression. Mental impairments are described under listing 12.00. Depression falls under affective disorders; the listing reads:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or

- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Looking at Part A of the listed impairment, there was evidence that Claimant suffered from sleep disturbance. The symptom was noted in claimant's Activities of Daily Living and it was also known that Claimant was prescribed medication for the problem. Claimant's suicide attempts resulting in hospitalization in 2007 and 2008 established that Claimant had suicidal thoughts, though Claimant conceded that the thoughts have decreased. Claimant's hallucinations were also well documented, as the hallucination that he heard voices from his neighbor's dog was the reason Claimant killed the dog and served a two year prison sentence. There were references that Claimant suffered from hallucinations since he was a teenager. The undersigned is also inclined to interpret Claimant having difficulties in concentration or thinking. Claimant indicated he suffers from memory loss. Claimant's history of panic disorders would reasonably be interpreted as an obstacle to concentration. It is found that Claimant suffers from four of

the symptoms in Part A-1 thereby satisfying the requirements of Part A. For Claimant to meet the listed impairment requirement for affective disorder, he must also meet the requirements for Part B.

Claimant's marked limits in social functioning were well documented. The DHS referred examiner specifically noted Claimant's depression interfered with Claimant's ability to socialize with the public, coworkers and family or friends. Such difficulties are easily construed as marked limitations.

There is less evidence that Claimant suffers marked limitations in concentration, persistence or pace. Though the undersigned found Claimant had concentration difficulties for purposes of meeting Part A, "marked difficulties" tends to be a higher burden than what Part A required. Claimant was prescribed medication to stabilize his mood and for help with his dysphoric mood. Despite the medication, Claimant credibly testified that he still suffers panic attacks and suffered one as recently as 10 days prior to the hearing. The undersigned is inclined to find Claimant's ongoing suffering of panic attacks as persuasive evidence that Claimant has marked difficulties in maintaining concentration, pace and persistence. Claimant stated the attacks result in increased heart rate and an inability to take any actions. It is found that Claimant established meeting two of the requirements for Part B.

As it has been found that Claimant met the requirements for Parts A and B, it is found that Claimant established meeting the listed impairment for affective disorder. Accordingly, it is found that Claimant established being a disabled individual and that DHS erred in denying Claimant's application for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 1/25/11 for MA benefits;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA benefits on the finding that Claimant is a disabled individual;
- (3) if Claimant is eligible, supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA benefits, to schedule a review for MA benefits for 7/2012.

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The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 29, 2011

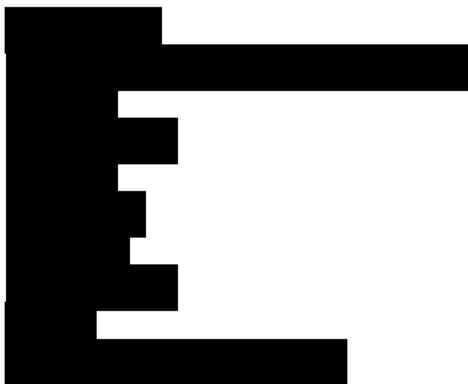
Date Mailed: July 29, 2011

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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