

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201133253
Issue No. 2009
Case No. [REDACTED]
Hearing Date: July 11, 2011
Macomb County DHS (20)

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 11, 2011. The Claimant appeared and testified; [REDACTED] also appeared and testified as Claimant's authorized hearing representative (AHR). 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 2/25/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/26/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2)
4. On 4/29/11, DHS mailed Claimant a Notice of Case Action informing Claimant of the denial of MA and SDA benefits.
5. On 5/5/11, Claimant requested a hearing disputing the denial of MA benefits; Claimant did not intend to appeal the SDA benefit denial.

6. On 6/2/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 80-81).
7. As of the date of the administrative hearing, Claimant was a 21 year old male [REDACTED] with a height of 5'8" and weight of 220 pounds.
8. Claimant has no relevant history of tobacco or alcohol though has a history of inpatient treatment for marijuana usage.
9. Claimant's highest education year completed was 12th grade.
10. Claimant last had medical coverage (Medicaid) for an unspecified period through 1/2011.
11. Claimant had no physical impairments.
12. Claimant claimed to be a disabled individual based on various impairments including bipolar disorder 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). 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 4/2011, 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/>.

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:

- 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
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances). BEM 260 at 1-2.

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 CF R 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 CF R 416.905. A functionally equivalent 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 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 impairment is a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by first reviewing Claimant’s medical history.

On [REDACTED] Claimant was psychologically examined (see Exhibits 7-10). Claimant was described as presenting “a very angry mood” and “demanding and rude”. Claimant was described as having “low self-esteem”, “in contact with reality” and lacking in motivation. The examiner found Claimant did not tend to exaggerate symptoms. Based on an examination, it was concluded Claimant suffered from an unspecified mood disorder. The examiner specifically concluded “rule out bipolar disorder” as a diagnosis.

The examining physician scored Claimant’s global assessment function (GAF). 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. Claimant was assessed a GAF score of 47 which is representative of “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).”

Claimant stated he has been hospitalized several times due to his mental disorders. Claimant’s mother testified that she estimated the number around 25 though Claimant believed the number to be slightly less. The medical examiner of [REDACTED] wrote of four previous hospitalizations because of depression and anger. A separate psychological examiner [REDACTED] (see Exhibit 64) only referred to two prior hospitalizations.

Claimant testified he was most recently hospitalized from [REDACTED]. Discharge documents dated [REDACTED] (see Exhibits 11-14) were included as part of the record. Claimant testified that he was discharged approximately 5 months ago after a voluntary eight day stay at [REDACTED]. Claimant and his mother conceded that both of them were not very good in remembering dates. The discharge instructions recommended substance abuse treatment, continuing treatment with his physician and various prescriptions including Benadryl (100 mg) to help Claimant with sleep, Depakote (500 mg @ 3x/day), Seroquel (200 mg) and Klonopin (1 mg @ 4x/day) for anxiety.

An unspecified crisis assessment was completed on [REDACTED] (see Exhibits 15-16). Another crisis assessment was performed on [REDACTED] (see Exhibit 17). No significant

medical evidence can be gleaned from these documents though they tend to support testimony that represented Claimant's mental problems as long-term.

Claimant was also discharged from a hospital on [REDACTED] (see Exhibits 18-19). The instructions recommend various medications to address bipolar disorder and its symptoms.

On [REDACTED], Claimant was examined and given a preliminary action plan (Exhibits 24-28) concerning bipolar disorder treatment. Medication review notes were also enclosed from the same examiner (see Exhibits 41-51). More detailed notes of the examination were included (see Exhibits 52-79).

The records documented Claimant's history which includes an alcoholic mother with bipolar disorder, unspecified physical abuse inflicted by Claimant's mother's boyfriends and a criminal history which includes manufacturing and delivering cocaine. It should be noted that Claimant testified that he spent time in jail for distribution of a medically prescribed substance.

Claimant's symptoms were described as: chronic panic attacks including one that occurred on the date of the administrative hearing, crying spells on a daily basis and a lack of sleep (typically three hours per day). Claimant stated that he is often exhausted from the lack of sleep.

Based on the totality of the evidence, Claimant established a sufficiently severe impairment to pass step two of the disability analysis. Claimant's judgment, ability to follow instructions and lethargy were all documented and would affect Claimant's abilities to perform basic work activities. Accordingly, the 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 Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If a listed impairment is not met, then the analysis moves to step four.

Claimant's testimony and medical records consistently pointed to bipolar disorder as the underlying impairment. Though one examiner ruled out bipolar disorder as a diagnosis for Claimant, that examiner instead diagnosed Claimant with depression. For purposes of whether Claimant meets a listed impairment, depression and bipolar disorder are affective disorders which fall under the same listing; thus, the distinction between the two is irrelevant. The listing reads as follows:

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.

The undersigned is inclined to find that Claimant meets the requirements for part A. Claimant's sleep disturbance was well documented in medical records and confirmed by Claimant's testimony. Claimant has a history of suicidal thoughts though Claimant conceded that he hadn't recently felt suicidal. Claimant's psychomotor retardation was indicated in an examination (see Exhibit 66). Pervasive loss of interest in activities, decreased energy and difficulty in concentration were also documented and supported by Claimant's testimony and the medical records. It is found that Claimant meets at least four of the criteria of Section A.

Claimant exhibited marked limitations in the first three of the listed criteria for Section B. Claimant is reliant upon his mother for most activities due to a general disinterest and energy. Claimant exhibited no inclination to interact other than in a temperamental fashion. Claimant also has had various bouts of decompensation including a recent eight day voluntary hospitalization. Claimant's difficulties are supported by the GAF score of 47 which is representative of marked difficulties in functioning. Claimant's history of prescriptions and medical records tend to support Claimant's testimony that he is very low functioning. It is found that Claimant is markedly limited in at least two of the three criteria listed in Section B. As it has been found that Claimant met the requirements for Part A, it is found that Claimant meets the listed impairment for affective disorder. Accordingly, it is also found that Claimant is a disabled individual and that DHS improperly found Claimant to not be a disabled individual.

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 requesting MA benefits. It is ordered that DHS:

- (1) reregister Claimant's application dated 2/25/11 for MA benefits;
- (2) process Claimant's application based on the finding that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) schedule a redetermination of future MA benefits for 7/2012.

The actions taken by DHS are REVERSED.



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

Date Signed: July 14, 2011

Date Mailed: July 14, 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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