

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

IN THE MATTER OF:



Reg. No.: 201136182
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: August 29, 2011
Wayne County DHS (82)

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 August 29, 2011 from Detroit, Michigan. The claimant appeared and testified; Rahiem Hampton 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) and State Disability Assistance (SDA) 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 3/11/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 4/8/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 4/19/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 5/23/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 6/30/11, the State Hearing Review Team (SHRT) found that Claimant retained the capacity to perform a wide range of simple unskilled work and determined that Claimant was not a disabled individual (see Exhibits 15-16) based, in part, on Vocational-Rules 204.00.
7. As of the date of the administrative hearing, Claimant was a 47 year old male [REDACTED] with a height of 5'11 " and weight of 175 pounds.
8. Claimant smokes approximately 10 cigarettes per day and has some history of alcohol and drug abuse.
9. Claimant's highest level of education completed was the 9th grade.
10. Claimant has no current medical coverage, and has not had medical coverage for several years.
11. Claimant claimed to be a disabled individual based on impairments of depression and other various mental disorders.

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 (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).

There was no evidence that any 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 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. 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 twelve 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 F2d 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 analysis will begin with a review of medical documents submitted by Claimant.

A Medical-Social Questionnaire (Exhibits 5-6) was completed by a "support advocate" of Claimant's. The form noted Claimant's mental disorder symptoms including: visual hallucinations, hearing voices, paranoia, mood swings, memory problems, depression, poor sleeping, poor appetite and poor concentration.

Claimant's treating doctor submitted a psychiatric evaluation (Exhibits 9-11) dated 3/3/11. It was noted that Claimant suffers from depression, possibly due to a childhood incident of sexual abuse.

A 1999 suicide attempt was noted. Claimant verified that he attempted to kill himself by standing in the middle of the road. Claimant was hit by a car. Claimant stated that he suffers ongoing injuries from the incident but none of the physical injuries were documented with any specificity. It should be noted that Claimant's application was verified as not alleging a disability based on any physically-related problems.

Claimant was diagnosed with major depressive disorder, recurrent severe with psychotic features. Claimant's marijuana and nicotine dependence were noted as well as Claimant's homelessness, lack of medical insurance and lack of income.

Claimant's Global Assessment Function (GAF) was noted as 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 GAF 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)."

Additional testimony from Claimant's contact person at his mental health provider verified much of the above information. He stated that Claimant suffers from depression

and described many symptoms from which Claimant suffers including: forgetfulness, an inability to concentrate, hallucinations, sleep problems, decreased energy and paranoid thinking.

Claimant's history of alcohol and drug abuse may be a factor in the disability decision. SHRT cited Public Law 104-121 which essentially states that individuals shall not be considered to be disabled based on alcoholism or drug abuse. SSA regulations also indicate that if a person is found disabled and there is evidence of ongoing abuse, it must be determined whether the ongoing abuse affects the finding of disability. 20 CFR 404.1535 (a).

Claimant stated that he abused alcohol and other illegal drugs until approximately 20 years ago. Claimant eventually conceded that he relapsed in early 2011 before stopping his drinking and drug usage since approximately 3/2011. There was no evidence presented to dispute Claimant's testimony. As Claimant is not an ongoing alcohol or drug abuser, there is no basis to believe that Claimant's current condition is adversely affected by ongoing abuse. Though it has not been ultimately determined whether Claimant is disabled, it is found that if Claimant is found disabled, there is no basis to evaluate whether nonexistent ongoing drug or alcohol abuse contributes to the disability.

Based on the presented evidence, Claimant established a severe impairment for depression. The psychiatric evaluation, along with Claimant's testimony and the testimony from Claimant's social worker all verified problems with Claimant's memory, ability to concentrate and other issues which would affect Claimant's ability to perform basic work activities. There is no evidence to doubt that the impairment will continue to last for 12 months. It is found that Claimant meets the requirements of step two of the disability analysis. 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 a 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 and/or bipolar disorder. Mental impairments are described under listing 12.00. Depression and bipolar disorders fall 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.

Starting with Part A of the above listed impairment, there was evidence that Claimant suffers hallucination and paranoid thinking. It was proven that Claimant attempted suicide, though this occurred 12 years prior to Claimant's application for MA benefits; there was a lack of evidence establishing Claimant recently or currently experiences suicidal ideation. There was evidence that Claimant suffered difficulties in concentrating or thinking based on Claimant's memory problems. Claimant's social worker testified that Claimant is easily distracted and loses focus. There was also evidence of sleep disturbance from Claimant and noted in the psychiatric evaluation. A fourth symptom from Part A could be a change in appetite. The psychiatric evaluation noted an appetite loss by Claimant. A better established symptom was feelings of guilt and worthlessness. Though this was not directly stated as an ongoing problem, it was well established that Claimant is struggling with the memories of childhood sexual abuse. There is some basis to find that Claimant's struggle includes feeling of guilt or worthlessness from the incident.

It is found that Claimant established four of the symptoms in Part A of the listing for affective disorder. The analysis will now consider whether Claimant met Part B of the above listing.

There is some evidence of marked difficulties in maintaining concentration. Supporting evidence includes Claimant's testifying social worker.

There is some evidence establishing marked restrictions in daily living activities. Claimant's psychiatric evaluation noted a body odor emanating from Claimant. However, there is little evidence to suggest Claimant is capable of performing typical daily activities such as showering, cleaning, using public transportation and paying bills.

There is little to no evidence suggesting Claimant has marked difficulties on social functioning. Claimant was deemed cooperative by all examiners. Claimant did not testify having any problems in getting along with others.

There is also a lack of evidence in repeated episodes of decompensation. Claimant had never been hospitalized for any periods and does not suffer from any particular concerning problems involving decompensation.

Based on the presented evidence, there is not enough to establish that Claimant suffers from more than one of the four requirements of Part B of the affective disorder listing. There is also no evidence to suggest that Claimant meets Part C of the listing. Accordingly it is found that Claimant failed to meet the listed impairment for affective disorders.

Listed impairments for schizophrenic, paranoid and other psychotic disorders (Listing 12.03), anxiety-related disorders (Listing 12.06) and Substance Abuse Disorders (Listing 12.09) were considered and also rejected. It is found that Claimant failed to establish meeting a listed impairment. Accordingly, the analysis moves on to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking

or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The analysis as to whether Claimant is capable of performing his previous employment will begin with evaluating the requirements of his previous job duties. Claimant's only reported employment consisted of being a cook from 1992-2006. Claimant testified that the employment consisted of standing for several hours and various degrees of physical labor. There was no evidence that would support Claimant physically incapable of performing his previous employment. Thus, Claimant is physically capable of performing previous employment. The question is whether Claimant suffers from non-exertional impairments that would prevent the performance of his past employment.

Claimant testified that he has reading difficulties. Claimant stated that while working as a cook, he needed to be verbally told the orders before he cooked them. He also stated that he learned by watching a fellow cook preparing an order rather than reading instructions.

There was evidence suggesting that Claimant lacked focus and attentiveness. Applying this obstacle into an employment setting would present problems for Claimant. However, there was insufficient evidence that Claimant's lack of focus would affect an employment setting. All that is known is that Claimant lacks attention during group therapy session, that Claimant is sometimes forgetful and that Claimant has some memory problems. Perhaps if Claimant's medical documentation was better developed, it could be found that he is incapable of performing his past employment. Based on the presented evidence, there is simply an insufficient amount to determine that Claimant is incapable of performing his prior employment as a cook. It is found that Claimant is capable of performing his past employment and therefore, not disabled. Accordingly, the DHS denial of MA benefits is upheld.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, 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).

The undersigned already found Claimant to be not disabled for purposes of MA benefits based on a capability of performing past employment. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly denied Claimant's application for SDA benefits on the basis that Claimant is not a disabled individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA and SDA benefits to Claimant on the basis that Claimant was not disabled. The actions taken by DHS are AFFIRMED.

Christian Gardocki

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

Date Signed: September 2, 2011

Date Mailed: September 2, 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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