

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201138122
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: September 12, 2011
Wayne County DHS (49)

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 September 12, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for 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 3/3/11, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On 4/22/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual.
4. On 4/29/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 5/10/11, Claimant requested a hearing disputing the denial of SDA benefits.

6. On 7/9/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 93-94) by determining that Claimant was capable of past employment.
7. As of the date of the administrative hearing, Claimant was a 40 year old male (DOB 7/26/71) with a height of 5'11" and weight of 205 pounds.
8. Claimant has no known relevant history of smoking, alcohol or illegal drug abuse.
9. Claimant's highest level of education completed was 12th grade.
10. Claimant receives ongoing medical coverage.
11. Claimant claimed to be a disabled individual based on impairments of: human immunodeficiency virus (HIV), depression, polyps on his voice box, sleep apnea, panic attacks and chronic hydronitis.

CONCLUSIONS OF LAW

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.

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/>.

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).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA benefits 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 SSI 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 functionally 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 was employed at the time of the hearing. As of 9/1/11, Claimant stated he began employment of 32 hours/week for \$14.56/hour. Claimant stated he only returned to performing his old job out of necessity and he expects to be fired soon due to the time off he'll inevitably need to deal with his impairment.

Based on SDA income budgeting policies (see BEM 518) it is certain that Claimant will exceed the income limit for SDA benefits as long as he is employed. Even presuming Claimant's lack of SDA eligibility beginning 9/2011, Claimant can still be eligible for SDA benefits beginning with the month of application (3/2011) through the last month Claimant was not employed (8/2011). As SDA benefits require only a three month durational disability period, it is plausible to find Claimant disabled for a period from 3/2011-8/2011 while meeting the SDA disability definition.

It should also be noted that Claimant had no income from 3/2011-8/2011, thus, was unquestionably not performing SGA until 9/2011. Though Claimant's income from 9/2011 exceeds the minimum amount considered SGA, there are exceptions which might enable Claimant to pass step one of the analysis. One exception is a trial work period. If a person attempts employment but cannot continue to do so, a person is not necessarily capable of performing SGA simply because they could do so for a limited time. The goal of this policy is to not discourage applicants or recipients from trying to be, or stay employed. SSA does not consider the ending of a disability unless the work has been performed for a nine month period. As Claimant's employment meets the SSA definition for trial work, SGA will not prevent Claimant from being found disabled at step one. Accordingly, the 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).

Symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect an individual's ability to do basic work activities unless the individual first establishes by objective medical evidence (i.e., signs and laboratory findings) that he or she has a medically determinable physical or mental impairment(s) and that the impairment(s) could reasonably be expected to produce the alleged symptom(s). SSR 96-3p. Once the requisite relationship between the medically determinable impairment(s) and the alleged symptom(s) is established, the intensity, persistence, and limiting effects of the symptom(s) must be considered along with the objective medical and other evidence in determining whether the impairment or combination of impairments is severe. *Id.* Vocational factors of age, education, and work experience are not considered at this step of the process. *Id.*

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with a review of the submitted medical documentation.

Claimant's reports from his treating doctor and lab results were presented (Exhibits 8-34). The reports and results covered a time period from 8/2010-3/2011. The documents were signed by Claimant's physicians treating his HIV. On 2/9/11 it was noted that Claimant was off of work due to anxiety. Various rashes Claimant complained of were noted on several of the visits. Claimant complained of tooth pain on a 2/9/11 visit. Claimant complained of depression at one appointment.

A psychological examination dated 12/14/10 was presented (Exhibits 56-59). Claimant was diagnosed with mild depression. The examining physician scored Claimant's GAF (global assessment function) at 60. 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 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

A Mental Residual Functional Capacity Assessment (Exhibits 60-61; duplicated as Exhibits 68-69)) was presented. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation; a therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Claimant's form was completed by a social worker and signed off by a physician though a date of examination was not provided.

Claimant was considered "markedly limited" in 14 of 20 areas including all levels of social functioning, three of four of adaptation capacities and 5 of 8 capacities concerning sustained concentration and persistence. Claimant was found not significantly limited in the areas of remembering instructions and his ability to carry out instructions.

A Psychological Examination Report (Exhibits 62-64; duplicate entered as Exhibits 65-67). The report was dated 1/29/11 and completed by Claimant's social worker but signed off by a physician. It was noted that Claimant was forgetful of appointments, had poor eye contact. Claimant's poor sleep and poor appetite were noted as problems. Claimant was noted as having an inability to enjoy friends or family and an inability to focus. Claimant was described as feeling hopeless and negative. It was noted Claimant preferred isolating himself at home. Claimant was deemed to have impaired judgment due to his negativity. Claimant was assessed a GAF of 50. 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)."

An Activities of Daily Living form (exhibits 74-77) dated 3/1/11 was completed by Claimant's sister, purportedly after discussions with Claimant. It was noted that Claimant had trouble sleeping, though no specifics were provided. Claimant stated he needed special help to take care of his grooming though no specifics were provided. Claimant noted that he needed help with all household chores and receives help from various people. Claimant also noted he does not do his own shopping. Claimant indicated he visits his sister and two friends.

Based on the presented evidence, there was a basis to find Claimant has a severe impairment based on depression. Though there was conflicting information concerning the level of Claimant's depression, it was well documented that Claimant's impairments affected his ability to perform basic work activities. Claimant lacked focus and an ability to concentrate. Claimant's inability to maintain focus and follow instructions were

markedly limited. There is no reason to believe that Claimant's impairments were less than the 90 day durational limit required for SDA benefits. It is found that Claimant suffered a severe impairment from 3/2011-8/2011. Accordingly, the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether a 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 90 day durational requirement for SDA benefits, then the claimant is deemed to be 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.

Looking at Part A, Claimant's difficulty in concentration and thinking, decreased energy, sleep disturbance and appetite disturbance were well documented. It is found that Claimant meets Part A of the above listing.

Looking at Part B of the above listing, there was also ample evidence that Claimant suffers from marked difficulties in concentration, persistence or pace. Claimant's physician described Claimant as lacking focus and concentration. Claimant was also described as withdrawn and isolated. Based on the multiple references to Claimant's markedly limited concentration level and ability to socially function on the Mental Residual Functional Capacity Assessment, it is found that Claimant meets Part B of the above listed impairment. Based on the previous finding that Claimant meets Part A of the above listing, it is found Claimant meets the SSA listed impairment for affective

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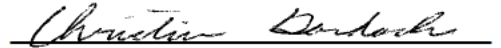
disorders. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in denying Claimant's SDA application.

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 SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 3/3/11 for SDA benefits;
- (2) upon reinstatement, evaluate Claimant's eligibility for SDA benefits based on a finding that Claimant is a disabled individual;
- (3) if Claimant is eligible for SDA benefits, supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future SDA benefits, to schedule a redetermination for one year from the date of this decision.

The actions taken by DHS are REVERSED.


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

Date Signed: September 28, 2011

Date Mailed: September 28, 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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