

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-49719
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: November 30, 2011
DHS County: Wayne (82-31)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, which govern the administrative hearing and appeal process, and Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on November 30, 2011. Claimant appeared and testified at the hearing. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant's disability meets the medical criteria for eligibility for Medical Assistance (MA or Medicaid), MA-retroactive and State Disability Assistance (SDA) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On October 7, 2010, Claimant applied for MA, MA-retroactive and SDA benefits.
2. Claimant's application for Social Security Disability benefits was denied, and an appeals hearing was held. Claimant awaits a decision from the Social Security Administration Administrative Law Judge.
3. Claimant's impairment is medically diagnosed as Bipolar I Disorder, Most Recent Episode Depressed, Moderate 296.52. He was first diagnosed with bipolar disorder in [REDACTED].
4. Claimant's behavioral symptoms are "Markedly Limited" in all twenty categories listed in the Mental Residual Functional Capacity Assessment. "Markedly

Limited” is the lowest possible rating in this Assessment tool. The Assessment is signed by Claimant’s psychiatrist and therapist at [REDACTED] (TMH).

UNDERSTANDING AND MEMORY

- a. The ability to remember locations and work-like procedures.
- b. The ability to understand and remember one or two-step instructions.
- c. The ability to understand and remember detailed instructions.

SUSTAINED CONCENTRATION AND PERSISTENCE

- a. The ability to carry out simple, one of (*sic*) two-step instructions.
- b. The ability to carry out detailed instructions.
- c. The ability to maintain attention and concentration for extended periods.
- d. The ability to perform activities within a schedule, maintain regular attendance, and be punctual with customary tolerances.
- e. The ability to sustain an ordinary routine without supervision.
- f. The ability to work in coordination with or proximity to others without being distracted by them.
- g. The ability to make simple work-related decisions.
- h. The ability to complete a normal workday and worksheet without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

SOCIAL INTERACTION

- a. The ability to interact appropriately with the general public.
- b. The ability to ask simple questions or request assistance.
- c. The ability to accept instructions and respond appropriately to criticism from supervisors.
- d. The ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes.
- e. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.

ADAPTION (SIC)

- a. The ability to respond appropriately to change in the work setting.
- b. The ability to be aware of normal hazards and take appropriate precautions.
- c. The ability to travel in unfamiliar places or use public transportation.
- d. The ability to set realistic goals or make plans independently of others.

5. Claimant is receiving treatment at [REDACTED]. He began treatment in [REDACTED], treated for ten months, discontinued treatment in [REDACTED], and returned for treatment on [REDACTED]. He has been treating at [REDACTED] since then. He is seen on a monthly basis by a psychiatrist and therapist together, and is currently taking Abilify, a medication for schizophrenia and bipolar disorder. His psychiatrist has recently added an anti-depressant prescription medication as well.
6. Claimant attends NA-AA meetings two or three times a month.
7. Claimant's impairments have lasted for a continuous period of more than twelve months.
8. Claimant is 5'11" and weighs 168 lbs.
9. Claimant is fifty-seven years old. His date of birth is [REDACTED].
10. Claimant has a high school diploma. He has no further education or training.
11. Claimant's reading and writing skills are poor, and he cannot perform basic math skills.
12. Claimant has not been employed since 1999, when he worked in his mother's store, [REDACTED], as an unpaid helper on an as-needed basis. His mother gave him some money from time to time in exchange for stocking shelves and cleaning up the store. Claimant also worked as a cook while he was incarcerated from [REDACTED] [REDACTED].
13. Claimant has the following physical limitations: nearsightedness, shortness of breath on exertion, hypertension, bilateral knee pain, back problems and arthritis in his hips. The arthritis began in [REDACTED] as a result of injuries sustained in a motorcycle accident.
14. Claimant has the following mental impairments: depression, rapid mood swings, racing thoughts; he suffers from paranoia, he hears voices and has hallucinations. Claimant also has a lifelong learning disorder, and sleep and appetite problems.
15. Claimant is taking Abilify, a prescription medication for bipolar disorder and schizophrenia. He is also taking Celexa for high blood pressure, Cardura for enlarged prostate, and an anti-depressant.

16. Claimant lives with his brother, [REDACTED]. His means of support is that his brother helps him by giving him a few dollars from time to time. He is currently receiving Food Assistance Program (FAP) benefits.
17. Claimant does not know how to cook and only makes himself TV dinners. Claimant can sweep the floor, but his back pain and arthritis prevent him from performing more vigorous housekeeping.
18. Claimant has a driver's license but does not drive. He does not take the bus by himself because he is not good with directions. He does not go anywhere because he has nowhere to go. His brother and daughter take him out to conduct his affairs, or a friend might drop him off.
19. Claimant is unable to manage money and money matters, such as benefit funds, concerning more than \$100.
20. Claimant does not have any hobbies or leisure time activities. He spends his daytime hours daydreaming and watching television, and has no community or social activities. He does not do yard work because he does not like personal contact with the people that walk by and want to talk to him. Claimant is afraid to attend work or school because he believes that when he gets there he will run right back out.
21. Claimant does not like dealing with people because he doesn't like their questions and answers, and he does not like socializing with them. Sometimes he is afraid of people and sees things coming out of them, such as spirits and weird-looking aliens from outer space.
22. Claimant feels his depression is getting worse, and on some days he cries two or three times. He sits around a lot and cannot and does not do anything at all. He was depressed in high school in the [REDACTED]. He hung his head down to his chest, and was not cheerful like other people around him.
23. Regarding the activities of daily living, Claimant gets up in the morning or afternoon and watches television.
24. At some time prior to [REDACTED], Claimant was involved in substance abuse (cocaine, heroin) and received substance abuse treatment.

25. [REDACTED] advised Claimant in the summer of [REDACTED] that he cannot work because he has angina, breathing problems, and chronic obstructive pulmonary disorder (COPD).
26. On May 17, 2011, Claimant filed a Request for a Hearing with DHS.
27. On October 17, 2011, DHS determined Claimant was not disabled and denied his application for MA, MA-retroactive, and SDA benefits.
28. Medical records reviewed are as follows:

[REDACTED]

29. Report reviewed: [REDACTED]
[REDACTED] Diagnosis: depression.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers MA pursuant to MCL 400.1, *et seq.*, and MCL 400.105. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

SDA provides financial assistance for disabled persons and is established by 2004 Michigan Public Acts (PA) 344. DHS administers SDA pursuant to MCL 400.10, *et seq.*, and Michigan Administrative Code Rules 400.3151-400.3180. DHS policies are found in BAM, BEM AND RFT. *Id.*

Federal regulations require that DHS must use the same operative definition for "disabled" as the Federal government uses for Supplemental Security Income (SSI)

benefits under Title XVI of the Social Security Act. 42 CFR 435.540(a). That definition is as follows:

“Disability” is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

In determining whether an individual is disabled, 20 CFR 416.920 requires the finder of fact to follow a sequential five-step evaluation process by which current work activity, the severity of impairment(s), residual functional capacity, and vocational factors (age, education, and work experience) are assessed, in that order.

A determination that an individual is *not* disabled can be made at any of the five steps. A determination that an individual *is* disabled can be made at the third, fourth or fifth steps only. If the fact finder finds disability at a particular step in the process, it is not necessary to continue the evaluation through subsequent steps.

1. Current Substantial Gainful Activity

Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the Federal regulations, it is presumed that she or he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she or he is not disabled regardless of how severe the physical and mental impairments are and regardless of age, education and work experience. If the individual is not engaged in SGA, the analysis proceeds to the second step.

In this case, Claimant has not been engaged in SGA for at least twelve years. Therefore, I find that Claimant is not disqualified from MA benefits at the first step, and I will proceed to the second step of the five-step MA analysis requirements.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, an individual must have a “severe impairment.” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing and speaking;
- (3) Understanding, carrying out, and remembering simple instructions.
- (4) Use of judgment;
- (5) Responding appropriately to supervision, coworkers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking medical merit. The U.S. Sixth Circuit Court of Appeals, in *Salmi v Secretary of Health and Human Services*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* at 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir 1988); *Farris v Sec’y. of Health & Human Servs.*, 773 F2d 85, 90 (6th Cir 1985).

In this case, Claimant gave credible and un rebutted testimony that he was diagnosed with bipolar disorder ten years ago. Claimant’s treatment records present credible and un rebutted testimony that he has been treating for bipolar disorder on and off since [REDACTED]. He has been prescribed numerous medications and is currently under the care of a psychiatrist and a psychotherapist. Claimant’s psychiatrist certifies Claimant has a markedly limited ability to perform all of the twenty skill categories related to work and that he has global developmental delay (mental retardation). Claimant’s limitations fulfill the descriptions set forth in sections (3)-(6) above, in relation to the severity of the impairment.

Based upon the findings of fact and conclusions of law above, I find and conclude that Claimant’s testimony, his psychiatric and social history, and his treating doctor’s evaluation of his employability, establish that Claimant has mental impairments that have more than a minimal effect on basic work activities, and Claimant’s mental impairments have lasted for more than twelve months.

3. Listed Impairment

After reviewing the criteria of CFR Title 20, Part 404, Subpart P, Appendix 1: Listing of Impairments, Listing 12.04, *Affective Disorders*, the undersigned finds that Claimant’s medical records substantiate that Claimant’s medical impairments meet or are medically

equivalent to a listed requirement. 20 CFR 404 §12.04 describes affective disorders as follows:

Sec. 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:

...

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.

20 CFR 404, Sub-part P, Appendix 1, Sec. 12.04, *Affective Disorders*, pp. 93-95.

Looking first to see if Claimant meets the requirements of the definition of bipolar disorder in Section A.3. above, Claimant's first psychiatrist, [REDACTED], diagnosed "Major Depressive Disorder, Recurrent, Moderate," in [REDACTED]. His second psychiatrist, [REDACTED], diagnosed bipolar disorder in [REDACTED] and continues to treat Claimant for it. I do not regard these diagnoses as inconsistent with each other, and I see [REDACTED] diagnosis as a more meaningful diagnosis based on more opportunities to observe Claimant in treatment, resulting in a more accurate understanding and diagnosis of his issues.

Based on the treating psychiatrist's diagnosis, it is found and determined that Claimant meets the requirements of Section A.3. above. In addition, the medical and historical records indicate that Claimant has displayed manic behavior, including auditory and

visual hallucinations, racing thoughts, paranoia, high-risk behavior, serious disruption of everyday functioning, and the inability to conduct grocery and other shopping, work, and school activities. With regard to the depression portion of bipolar disorder, both his treating psychiatrists and the evaluating psychologist over two years ago in [REDACTED], diagnose depression, so there is no serious dispute that Claimant suffers from this portion of the bipolar disorder.

Accordingly, the undersigned finds and determines that the requirements of Part 3 of Section A have been met by Claimant in this case.

Next, the requirement of Section B above is that there must be at least two of the four Section B listed behaviors present. The undersigned finds that Claimant's activities of daily living are markedly restricted, as in item B.1. above. Claimant gave credible and un rebutted testimony that he does not drive or take the bus, he relies on others to take him everywhere, he does not support himself, and he cannot manage his own money matters. Claimant relies on his brother and daughter to provide him with some money, and relies on his brother to house him. He spends his days daydreaming and watching television. These features fulfill the requirement of item B.1. above.

Looking next at item B.2. above, the undersigned finds that Claimant has marked difficulties in social functioning. This conclusion is based on Claimant's lack of social activities, his paranoia, his desire to stay away from people, his history of substance abuse, violent and high-risk behavior, and the hallucinations he experiences around people.

Although only two of the four behaviors in item B must be found, in this case it is noted that, in fact, three of the four behaviors are present. Considering item B.3. above, "marked difficulties in maintaining concentration, persistence or pace," the record is replete with evidence that Claimant does indeed have these difficulties as well. The Mental Residual Functional Capacity Assessment completed by [REDACTED] confirms that Claimant's sustained concentration and persistence is markedly limited in eight of the eight types of sustained concentration and persistence identified in the assessment form. The description "markedly limited" is the most limited description available on the form. Based on this evaluation, and on all of the testimony and evidence in this case considered as a whole, it is found and concluded that Claimant has marked difficulties in maintaining concentration, persistence or pace.

It is noted at this point that there are no records of medical treatment in the record before [REDACTED]. The undersigned has taken this into consideration in this decision, as required by 20 CFR 404, Subpart P, Appendix 1, Section 1.00H, Documentation-When there is no record of ongoing treatment:

Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the current objective medical evidence and other available evidence, taking into consideration the individual's medical history, symptoms, and medical source opinions. Even though an individual who does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled based on consideration of his or her residual functional capacity (RFC) and age, education and work experience. 20 CFR 404, Subpart P, Appendix 1, Sec. 1.00H.

Considering all of the above, and including Claimant's age, education and work experience, the undersigned finds the medical reports, Claimant's history and his testimony substantiate that Claimant's mental impairments meet or are medically equivalent to the Listing requirements of 12.04-Affective Disorders. In this case, this Administrative Law Judge finds that Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program.

In conclusion, based on the findings of fact and conclusions of law above, I find and determine that a preponderance of the evidence supports the finding that Claimant has an impairment which disables him and which is a Listed Impairment under Federal SSI disability standards. The Administrative Law Judge finds Claimant is disabled for purposes of the MA program of the State of Michigan.

Also, a person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. In addition, receipt of SSI or RSDI benefits based on disability or blindness, or receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261.

I find and conclude that the Department is hereby REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES the DHS State Hearing Review Team (SHRT) decision of October 17, 2011. I find and decide that Claimant is medically disabled from all work as of October 1, 2010, and is therefore medically eligible for MA and MA retroactive benefits. I further find and determine that Claimant is also automatically eligible for SDA benefits.

IT IS HEREBY ORDERED THAT the Department shall:

1. Initiate a review of Claimant's October 7, 2010, application, if not done previously, to determine Claimant's nonmedical eligibility for MA, MA-retroactive and SDA benefits;
2. If Claimant is otherwise eligible on a non-medical basis, initiate procedures to provide Claimant with appropriate ongoing and retroactive MA benefits;
3. If Claimant is otherwise eligible on a non-medical basis, initiate procedures to provide Claimant with retroactive and ongoing SDA benefits at the benefit level to which he is entitled;
4. Initiate procedures to see that a review of this case will be conducted in January 2013.
5. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 7, 2011

Date Mailed: November 7, 2011

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.

2011-49719/JL

- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JL/pf

cc:

