

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-54463
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: December 12, 2011

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 conducted from Detroit, Michigan on December 12, 2011. The Claimant appeared, along with [REDACTED] and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs.

FINDINGS OF FACT

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

1. Claimant submitted an application for public assistance seeking MA-P and SDA benefits on March 14, 2011.
2. On June 24, 2011, the Medical Review Team (MRT) determined that Claimant was not disabled.
3. The Department notified Claimant of the MRT determination on June 29, 2011.

4. On September 20, 2011, the Department received Claimant's timely written request for hearing.
5. On November 16, 2011, the State Hearing Review Team found Claimant not disabled.
6. At the time of the hearing, the Claimant was [REDACTED] old with a birth date of [REDACTED].
7. Claimant has a sixth grade education and earned his General Education Development (GED) certification.
8. Claimant is not currently working.
9. Claimant has a bipolar disorder.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
11. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Bridges Reference Tables ("RFT").

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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 trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that he is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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, co-workers 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 in medical merit. *Higgs v. Bowen* 880 F.2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant’s work activities. The May 19, 2011 psychological examination report shows Claimant to have a bipolar disorder and a GAF score of 50.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant’s medical record will support a finding that Claimant’s impairment(s) is a “listed impairment” or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

In the present case, Claimant has alleged mental disabling impairments due to bipolar disorder.

When evaluating mental impairments, a special technique is used. 20 CFR 416.920a(a). First, an individual’s pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual’s significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual’s ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual’s degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2).

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. (12.00A.) The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. (12.00B.) The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). (12.00D.)

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of 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 on 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 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 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.

In the present case, the psychological examination report of May 19, 2011 shows Claimant to have a diagnosis of bipolar disorder (12.04 A 3), grandiosity, risk-taking behavior and a history of delusions (12.04 A 2 d, g, and h, 12.04 A 1 i), a GAF score of 50, which is consistent with Claimant's testimony regarding thoughts of suicide as well as the psychological medical report of May 19, 2009 detailing thoughts of suicide (12.04 A 1 h), and an indication that Claimant's clothing appeared to need washing, which is consistent with Claimant's testimony that he did not clean his house for four months (12.04 A 1 e). The May 19, 2009 psychological examination report also documents sleep disturbance. (12.04 1 c.) The psychological report of May 19, 2011 stated in part, [REDACTED] is not believed to have the mental ability to relate to others, including fellow workers, supervisors, and the general public in a work-related environment due to his unstable mood." (12.04 B 1, 2.) The same report indicated a moderate impairment in maintaining concentration, persistence or pace. (12.04 B 3.) The May 19, 2009 psychological examination report indicates that Claimant was hospitalized about fifteen to twenty times for suicide and depression. (12.04 B 4.)

In light of the foregoing, it is found that the Claimant's impairment meets, or is the medical equivalent thereof, of a listed impairment within 12.00, specifically 12.04 A and B. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

It is noted that Claimant submitted testimony and documentation regarding a fractured clavicle, which fracture occurred subsequent to Claimant's application and therefore was not considered in this decision.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rule 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

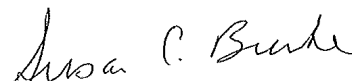
In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the March 14, 2011 application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
3. The Department shall, in light of Claimant's history of mental illness and substance abuse, evaluate the need for a protective payee in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review Claimant's continued eligibility in one year from the date of this decision in accordance with Department policy.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 12/21/11

Date Mailed: 12/21/11

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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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.
- 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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

SCB/ sm

cc:

