

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

**IN THE MATTER OF:**



Reg. No.: 2011-54618  
Issue Nos.: 2009, 4031  
Case No.: [REDACTED]  
Hearing Date: December 19, 2011  
DHS County: Wayne (82-31)

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37, and Claimant's request for a hearing. After due notice, a telephone hearing was held on December 19, 2011, from Detroit, Michigan. Claimant appeared and testified. Claimant was represented by [REDACTED], his sister. [REDACTED], Claimant's nephew, appeared and testified as a witness on behalf of Claimant. The Department of Human Services (Department) was represented by [REDACTED].

**ISSUE**

Did the Department properly determine that Claimant is not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

**FINDINGS OF FACT**

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

1. On July 12, 2011, Claimant filed an application for MA and SDA benefits. The application requested MA-P retroactive to April 1, 2011.
2. On September 7, 2011, the Department denied Claimant's application for benefits, finding that Claimant did not meet the requisite disability criteria.
3. On September 16, 2011, Claimant filed a hearing request to protest the Department's determination.
4. Claimant, age forty-eight ([REDACTED]), is a high-school graduate. He attended Community College for two years but did not attain a degree.

5. Claimant last worked in 2006 at [REDACTED]. He cleaned cars, talked with customers, and drove cars to assigned ports. Before that, Claimant performed relevant work drawing blood at [REDACTED]. His qualifications certificate to draw blood expired in 2005. Also in 2005, Claimant worked for [REDACTED] handling baggage.
6. Claimant's relevant work history consists exclusively of semi-skilled and unskilled work activities.
7. Claimant has a history of mental illness and alcoholism.
8. Claimant has not been hospitalized.
9. Claimant currently suffers from paranoid schizophrenia.
10. Claimant has severe limitations in his mental ability to relate to co-workers and supervisors, understand, remember and carry out all but simple tasks, maintain attention, concentration, persistence, pace and effort, and withstand the stress and pressure associated with day-to-day work activities. Claimant's limitations have lasted or are expected to last twelve months or more.
11. Claimant's complaints and allegations concerning mental impairments and limitations, when considered in light of all of the 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**

MA is established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM AND RFT.

Federal regulations require that the Department use the same operative definition for disability as the Federal government uses 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 five-step sequential evaluation process by which current work activity, the severity of the impairment(s), 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 is made at Step 3 or 4 in the sequential evaluation, evaluation under a subsequent step is not necessary.

Looking first at Step 1, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified for MA at this step in the sequential evaluation process.

Step 2 requires that a person must have a severe impairment in order to qualify for MA. 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 means the abilities and aptitudes necessary to do most jobs. Some examples are:

- (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 Step 2 in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> Cir, 1988). At Step 2, the Department may screen out only those claims which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimis* hurdle" in the disability determination. The *de minimis* standard is a provision of law that allows the court to disregard trifling matters.

In this case, it is found that Claimant has presented the required medical data and evidence necessary to support a finding that he has significant mental limitations on his ability to perform basic work activities such as relating to co-workers and supervisors, understanding, remembering and carrying out all but simple tasks, maintaining attention, concentration, persistence, pace and effort, and withstanding the stress and

pressure associated with day-to-day work activities. Medical evidence has clearly established that Claimant has an impairment that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. The Administrative Law Judge finds that Claimant in this case has met the severity requirement of Step 2.

Next, Step 3 of the SSI sequential consideration of a disability claim requires the trier of fact to determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record supports a finding that Claimant's impairment(s) is a "listed impairment" or the equivalent of a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

Section 12.03, Schizophrenic, Paranoid and Other Psychotic Disorders, is the impairment Listing applicable in this case. The Listing defines this group of impairments as

[c]haracterized by the onset of psychotic features with deterioration from a previous level of functioning. 20 CFR, Part 404, Part A, Subpart P, Appendix 1, Sec. 12.03.

Section 12.03 has additional requirements that must be met in order for a customer to be disqualified at the Step 3 Listing step. The record in this case indicates that Claimant meets the following definitions of subsection C.3.:

- C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic 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...
- 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.

*Id.*, paragraph C.3.

The record in this case shows that Claimant was diagnosed as a paranoid schizophrenic by [REDACTED]. [REDACTED] observed more than minimal limitation of Claimant's ability to relate to coworkers and supervisors, his ability to understand, remember and carry out tasks, difficulty in performing multi-step tasks, maintaining attention, concentration, persistence, pace and effort, and his ability to withstand the stress and pressure associated with day-to-day work. [REDACTED] stated that Claimant's prognosis is "Poor."

At [REDACTED] examination, Claimant displayed faulty contact with reality, diminished self-esteem, minimal insight and judgment, vague, circumstantial and disorganized mental activity, and immature content of communication.

Claimant told [REDACTED]:

I'm paranoid a lot that the State of Michigan is tracking me wrong. I don't trust others. I was attracted to a woman and I didn't hide it. I have to be careful due to transvestites. I have to stay out of prison. My mother says I have something wrong with me.

[REDACTED] stated it was difficult to keep Claimant on track, and he was very tangential and immature. [REDACTED] noted Claimant's emotional reactions were friendliness, suspiciousness, and anger and that his mood was euphoric.

In addition, Claimant is not taking medication currently and advised the Department that he needs a psychiatrist to prescribe medication and direct him to psychotherapeutic treatment resources.

Regarding Claimant's living arrangements, he can cook using a microwave, he is unable to complete tasks, he falls asleep in the afternoons and while playing video games, he does no laundry, does not pay bills and cannot manage money, he watches TV, takes walks and runs errands, lives alone, needs help from family members, and his house is in a filthy state. Claimant's nephew does yard work for him, and Claimant needs help with shopping for more than just a few items.

Continuing with Claimant's living situation, Claimant forgets to bathe and brush his teeth unless someone tells him to. He keeps the television on all day and night because he cannot bear complete silence, but he believes the TV is sending him messages. He has sleep problems, as his mind is bombarded with thoughts and he needs to make sure no one breaks into his house.

The record indicates that his condition has continued for at least six years, as he was fired from [REDACTED] in 2006 when he could not remember how to finish his work tasks. He has not returned to work, and, in particular, he has not returned to his work at drawing blood, a task for which he was previously trained and certified.

I note at this point that there are no records of Claimant's medical treatment in the record and, nonetheless, I accept his credible, un rebutted testimony regarding his medical impairments. I took this into consideration in making my 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.

Accordingly, Claimant is found to be disabled at Step 3, based upon the medical and other evidence in the record. 20 CFR 416.920(d). As Claimant is found disabled at Step 3 of the SSI sequential process, it is not necessary to proceed further through Steps 4 and 5.

In conclusion, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program and the Department's decision is REVERSED.

Looking next at whether Claimant is qualified to receive SDA benefits, it must now be determined whether the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (MA-P) (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, he must also be found disabled for purposes of SDA benefits. As to this issue, the Department is also REVERSED.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that Claimant meets the definition of medically disabled under the MA, MA-retroactive and SDA programs as of April 1, 2011. The Department is REVERSED.

Accordingly, the Department is ordered to:

1. Initiate a review of the July 12, 2011, application, if it has not already done so, to determine if all other nonmedical eligibility criteria are met;
2. Initiate procedures to inform Claimant and [REDACTED], his Authorized Representative, of its determination in writing;
3. Initiate procedures to schedule a review of Claimant's continued eligibility for program benefits no earlier than February 2013.



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

Date Signed: December 20, 2011

Date Mailed: December 20, 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.
- 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:

