

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-16189
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 13, 2012
County: Oakland (63-04)

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 February 13, 2012, from Detroit, Michigan. Claimant appeared and testified. [REDACTED], appeared and testified 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) program?

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 September 19, 2011, Claimant filed an application for MA-P benefits. The application requested MA-P retroactive to June 1, 2011.
2. On October 20, 2011, the Department denied Claimant's application for benefits based on a finding that Claimant did not meet the requisite disability criteria.
3. On November 30, 2011, Claimant filed a hearing request to protest the Department's determination.

4. Claimant, age thirty-five [REDACTED]), has a high-school education. He was a special education student.
5. Claimant last worked in 2008 as an assembly line worker. Claimant has also performed relevant work as a truck driver delivering patio furniture. Claimant's relevant work history consists of unskilled and semi-skilled activities.
6. Claimant has a history of bipolar disorder dating from about [REDACTED] when he was ten years old. At that time, he was diagnosed with depression and anxiety disorder.
7. Claimant also has a history of neck and back arthritis, degenerative disc disease and sciatica since [REDACTED]. He had neck surgery in [REDACTED].
8. Claimant was hospitalized in an inpatient psychiatric unit from [REDACTED] [REDACTED], as a result of paranoid, delusional and threatening behavior. His discharge diagnosis was bipolar disorder (manic with psychotic features).
9. Claimant currently suffers from bipolar disorder.
10. Claimant has severe mental limitations upon his ability to work or attend school. Claimant's limitations have lasted or are expected to last twelve months or more.
11. Claimant's complaints and allegations concerning his 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 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). The Department administers MA 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 (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 the Department to use the same definition for "disabled" as the U.S. Social Security Administration uses for Supplemental Security Income (SSI) benefits applications under Title XVI of the U.S. 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 (Step 1), the severity of the impairment(s) (Steps 2 and 3), current physical and mental impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) (Steps 4 and 5) 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, no evaluation under a subsequent step is necessary.

Turning now to the required five-step evaluation, Step 1 requires the trier of fact to determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Claimant is unemployed. Therefore, Claimant is not disqualified for MA at Step 1 of the sequential evaluation process.

Second, Step 2 requires that 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 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. 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 Step 2 in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may screen out at this level 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, Claimant has presented the required medical data and evidence necessary to support a finding that he has significant physical and mental limitations upon his ability to perform basic work activities such as factory assembly line and truck driving and delivery work. Medical evidence clearly establishes that Claimant has bipolar disorder, which is an impairment (or combination of impairments) that has more than a

minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

As Claimant meets the severity requirement of Step 2, the trier of fact must next consider Step 3 of the sequential consideration of a disability claim. In Step 3 of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404-Listing of Impairments. This Administrative Law Judge finds that Claimant's medical record supports a finding that Claimant's impairment(s) is a listed impairment or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant is found disabled based upon the medical evidence alone. 20 CFR 416.920(d).

It is found and determined that Claimant meets the requirements of Listing 12.04, Affective Disorders, Subsection C, which states as follows:

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.

20 CFR, Appendix 1, Subpart P, Part 404, Part A, Listing 12.04C.

It is found and determined that Claimant is disabled as defined in subsections 2 and 3 of Section 12.04 C quoted above. With regard to subsection 2, the credible and un rebutted testimony and evidence in the case record indicate that Claimant, at the age of ten years old, was diagnosed with depression and anxiety. He began using marijuana at fourteen years old and crack cocaine at eighteen years of age. These experiences have a high probability of painful consequences which were not recognized.

Claimant has two convictions for driving under the influence of alcohol, the last in [REDACTED]. He was on probation until [REDACTED] for this offense. In [REDACTED] he denied using alcohol for the previous six months. He used crack cocaine in [REDACTED] and marijuana in [REDACTED].

Claimant lives on his own and is supported financially by his parents. On about [REDACTED] [REDACTED] Claimant told his parents he was thinking of hurting himself. Claimant's parent's asked him to get help at the hospital and he refused. His parents called the police to take him to the hospital. When the police arrived at Claimant's condo, they discovered that Claimant broke all the mirrors, punched holes in the walls, threw a vacuum cleaner into a wall, and threw some of his furniture outside of the house.

At the hospital, Claimant reported that he hears voices through his ceiling fan and thinks he is being monitored through his TV set. He also believes his friends and ex-girlfriends are controlling his life by monitoring his behavior from a distance. He believes his friends want him to "be down...they are not allowing me to live my own life, people are stalking me." At the hearing, Claimant at first denied making this report of himself and expressed anger that these statements were in his hospital records. However, after reviewing the hospital records which quote him verbatim, he did remember making these statements.

Claimant reported that he had anxiety and depression previous to the [REDACTED] episode and has tried several antidepressants in the past. Upon discharge from the hospital on [REDACTED] Claimant was instructed to follow up with [REDACTED] a psychiatrist. He was further instructed to continue with a psychiatrist and with his prescription medications: Lamictal, Prozac, Zyprexa and Buspar. Claimant has done so, and the medications do allow him some improvement.

Since his discharge, Claimant has been treating with [REDACTED] psychiatrist at [REDACTED]. [REDACTED] has kept Claimant on the same four medications and has not changed Claimant's diagnosis to his knowledge. Claimant anticipates he will be treating with her for at least a year, maybe longer than that. Claimant sees her every two months.

Claimant testified, "I haven't been as happy as I could be, I guess." Claimant attributes his mental impairment to the loss of his job in 2008 and the subsequent loss of health insurance in 2009. The job loss was due to disability, and Claimant had neck surgeries in [REDACTED]. Also, in [REDACTED] he had 4-5 low back (L4) epidural injections for back pain.

After his insurance ran out, he experienced chronic pain for a very long time, including neck, back and sciatic pain. The pain escalated for him, and Claimant agreed he had had incidents before [REDACTED], though "not as severe." Hospital records note impaired impulse control and judgment.

Claimant's mother, [REDACTED], testified that there are a lot of things Claimant does not remember. She testified that there was more going on than just the [REDACTED] incident. She gave credible and un rebutted testimony that Claimant has had problems for as long as ten years.

While he was still working, Claimant told his mother that everyone at work was looking at him and talking about him. He had paranoid episodes, where he pointed out certain license plates and t-shirt prints which would “mean something” to him.

██████████ gave credible and un rebutted testimony that she witnessed an occasion where Claimant said he was hearing voices through a ceiling fan, so he tore it out of the ceiling and covered it up. Claimant does not remember this incident.

██████████ gave credible and un rebutted testimony that she had voicemail messages from him saying that the family was out to get him. She went to his condo and he would say they were talking about him on TV, and that they could watch his every move. He doesn't recall any of this. The shelving and the walls in all of his closets were torn out, and all of the drawers were torn out of his dressers.

██████████ gave credible and un rebutted testimony that any change in Claimant's environment would cause him to have a serious setback. She stated he could even require hospitalization again or onsite recovery and treatment. In the past five years, she and her husband have tried numerous times to get him help, and he refused. She agreed with her son that his medications improve his ability, but stated that he needs ongoing evaluation, and he now has thyroid issues as well.

The undersigned finds and determines that all of the above qualifies Claimant as disabled within the definitions of subsections 2 and 3 of Subsection C, Listing 12.04, Affective Disorders. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program, with an onset date of 2007. The Department's denial of MA benefits to Claimant is REVERSED.

Although Claimant has not applied for SDA, an individual who has a physical or mental impairment which meets federal SSI disability standards for at least 90 days may be eligible for SDA benefits. Receipt of MA benefits based upon disability or blindness (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.


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 Medical Assistance program.

Accordingly, the Department is ordered to:

1. Initiate a review of Claimant's September 19, 2011, application, if it has not already done so, to determine if all nonmedical eligibility criteria for MA, MA-retroactive and SDA benefits have been met;

2. Initiate procedures to inform Claimant of its determination in writing, and provide MA-P, MA-P retroactive, and SDA benefits to Claimant at the benefit levels to which he is entitled;
3. Assuming that Claimant is eligible for program benefits, initiate procedures to review Claimant's continued eligibility for program benefits in March, 2013.
4. 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: February 15, 2012

Date Mailed: February 16, 2012

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.

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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:

