

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012-2068  
Issue Nos.: 2009, 4031  
Case No.: [REDACTED]  
Hearing Date: January 3, 2012  
DHS County: Wayne (82-17)

**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 January 3, 2012. Claimant appeared and testified. Claimant was represented by his Authorized Hearing Representative, [REDACTED]. The Department of Human Services (Department) was represented by [REDACTED].

**ISSUE**

Did the Department determine properly 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 on competent, material and substantial evidence and on the whole record, finds as fact:

1. On May 20, 2011, Claimant filed an application for MA-P and SDA benefits. The application requested MA-P retroactive to February 1, 2011.
2. On August 16, 2011, the Department's Medical Review Team (MRT) found the Claimant not disabled.
3. On September 30, 2011, the Department received Claimant's written request for an administrative hearing.
4. On November 23, 2011, the Department's State Hearing and Review Team (SHRT) found the Claimant not disabled.
5. Claimant, age fifty-two, has a high-school education.

6. Claimant is 5'6" and weighs 161 lbs.
7. Claimant last worked in 2008 as a hi-lo driver stocking shelves and loading and unloading delivery trucks. Claimant also worked as a steelworker.
8. Claimant suffers from bipolar disorder, bilateral shoulder and ankle pain, low back pain, mild arthritis and alcohol dependence.
9. Claimant has severe limitations in understanding and memory, sustained concentration and persistence, and social interaction and adaptation.
10. Claimant's limitations have lasted for twelve months or more.

### **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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

SDA provides financial assistance for disabled persons pursuant to the law of the State of Michigan, 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 Social Security Administration uses for Supplemental Security Income (SSI) 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), 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 Step 3 or Step 4, no evaluation under a subsequent step is necessary.

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 not working.

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 is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> 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 understanding, carrying out and remembering simple instructions, use of judgment, responding appropriately to supervision, co-workers and usual work situations, and dealing with changes in a routine work setting. Medical evidence clearly establishes that Claimant has 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, 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.

On [REDACTED] psychiatrist, diagnosed Claimant with bipolar II disorder, including hypomania. He prescribed Seroquel and Celexa for Claimant, as well as psychiatric monitoring and psychotherapy.

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

diagnosis substantiates meets a listed Impairment. 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.

Based on Claimant's treating psychiatrist's diagnosis, it is found and determined that Claimant meets the requirements of Section A.3. as listed above. Claimant began treatment on [REDACTED]. The medical and historical records indicate that Claimant has displayed hypomanic behavior, anxiety, and mood swings. He does not like to leave the house, his mother cooks for him, and he watches television five hours a day. He stays by himself and is not active in church, clubs or other group activities. He has had sleep difficulties. He has limited insight into his behavior, serious disruption of everyday functioning, and inability to conduct grocery and other shopping, work, and school activities. Claimant also has alcohol and physical issues as well.

Claimant's relevant work history consists exclusively of unskilled heavy work activities. [REDACTED] indicated on the Mental Residual Functional Capacity Assessment that Claimant has marked limitations on his ability to understand and remember detailed instructions, to carry out detailed instructions, to work in coordination with or proximity to others without being distracted by them, 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.

[REDACTED] also stated that Claimant's capacity to perform the following activities is impaired or moderately limited: the ability to remember locations and work-like procedures, the ability to understand and remember one or two-step instructions, the

ability to carry out simple, one or two-step instructions, the ability to maintain attention and concentration for extended periods, the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, the ability to sustain an ordinary routine without supervision, the ability to make simple work-related decisions, the ability to interact appropriately with the general public, the ability to ask simple questions or request assistance, the ability to accept instructions and respond appropriately to criticism from supervisors, the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, the ability to respond appropriately to change in the work setting, the ability to be aware of normal hazards and take appropriate precautions, the ability to travel in unfamiliar places or use public transportation, and the ability to set realistic goals or make plans independently of others. Claimant's limitations have lasted or are expected to last twelve months or more.

Accordingly the undersigned finds and determines that in this case, Claimant meets the requirements of Part 3 of Section A listed above.

Next, the requirement of Section B listed above is that there must be at least two of the four behaviors listed in Section B present. The undersigned finds that Claimant's activities of daily living are markedly restricted, as in item B.1. Claimant watches TV five hours a day, he does no household chores, cooking, laundry, or outside chores. He does not like to leave the house. These features fulfill the requirement of item B.1. as listed above.

Looking next at item B.2 listed above, the undersigned finds that Claimant has marked difficulties in social functioning. This conclusion is based on Claimant's lack of social activities, his need to stay away from people, his history of substance abuse, and his lack of interest in hobbies or activities other than playing guitar and watching television.

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. listed 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 are moderately limited in five and markedly limited in three 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 difficulties in maintaining concentration, persistence or pace, as listed in item B.3. above.

It is noted at this point that there are no records of medical treatment in the record before 2010. 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 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 Claimant is presently disabled at the third step for purposes of MA-P. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

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. Accordingly, Claimant is found to be disabled based solely on the medical evidence. 20 CFR 416.920(d). Steps 4 and 5 need not be considered, as disability has been found at Step 3 of the five-step sequential review process.

In conclusion, this Administrative Law Judge concludes that Claimant is disabled for purposes of MA-P. The Department's denial of MA-P benefits to Claimant is REVERSED.

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA-P 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. Inasmuch as Claimant has been found disabled for purposes of MA-P, he must also be found disabled for purposes of SDA benefits.

**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-P and SDA programs as of May 20, 2011.

The Department is REVERSED in this case. The Department is ordered to:

1. Initiate a review of the Claimant's May 20, 2011, application for MA-P, MA-P retroactive, and SDA, if it has not already done so, to determine if all other nonmedical eligibility criteria 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, the Department shall initiate procedures to review 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: January 6, 2012

Date Mailed: January 9, 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:

2012-2068/JL

- 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:

