

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201235691
Issue No. 2009
Case No. [REDACTED]
Hearing Date: April 30, 2012
Oakland DHS (04)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 held on April 30, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] testified and appeared as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. On 12/9/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 2/6/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).
4. On 2/9/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 2/16/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 4/2/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 50), in part, by finding that Claimant retains the capacity to perform a wide range of unskilled work.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'11" and weight of 224 pounds.
8. Claimant has a history of alcohol and prescription drug abuse and remains a 10-20/day cigarette smoker.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had no ongoing medical coverage and had not had any coverage since an unspecified time from the 1990s.
11. Claimant alleged that he is a disabled individual based on psychological impairments such as depression and bipolar disorder.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program 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 Manual (RFT).

The controlling DHS regulations are those that were in effect as of 12/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons

under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints

201235691/CG

are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2011 monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe

impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

A Medical Social Questionnaire (Exhibits 8-9) dated [REDACTED] was presented. The Claimant completed form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant noted two previous psychological hospitalizations related to suicidal ideation, one in [REDACTED] and one in [REDACTED]. Claimant noted both hospitalizations were voluntary and resulted in seven day stays. Claimant listed his prescriptions, but noted that he currently takes Seroquel and Prozac for depression and Campral to address his drug dependence.

A Mental Residual Functional Capacity Assessment (Exhibits 12-13) (MRFCA) dated [REDACTED] was completed by Claimant's treating physician. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Claimant was considered moderately limited or better in all 20 listed areas.

A Psychiatric Evaluation (Exhibits 14-19) dated [REDACTED] by Claimant's treating psychiatrist was presented. It was noted that Claimant reported feelings of guilt, suicidal thoughts, poor sleep and poor appetite. It was noted that Claimant reported recent dependencies on alcohol and prescription pain medication. Claimant was noted as having fair hygiene, a cooperative attitude, depressed mood, normal affect, normal speech, no hallucinations, a goal directed thought process, normal concentration (subsequently described as fair), adequate impulse control and adequate judgment.

The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). Axis I represents the acute symptoms that need

treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale.

Axis I noted major depressive disorder (recurrent) and alcohol and opiate dependence. Axis II was deferred. Axis III indicated no available diagnoses exist and was subsequently noted that Claimant had Scheurmann's Disease of the spine. Axis IV noted economic and occupational problems. Claimant's GAF was 50. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

An Intake/Annual/Re-Assessment (Exhibits 20-35) dated [REDACTED] from Claimant's treating psychiatric facility was presented. It was noted that Claimant was hospitalized on [REDACTED] for suicidal ideations, feelings of embarrassment, shame and guilt. It was noted that Claimant felt responsibility for his children's needs not being met. It was noted that Claimant had relapsed on prescription pills and alcohol. It was noted that Claimant reported doing "really good" since his hospitalization. It was noted that Claimant never attempted suicide. Claimant was noted as a minimal risk of harm to others. It was noted that Claimant had no history of hallucinations. The examiner provided a diagnosis based on DSM-IV. Axis I noted bipolar disorder. Claimant's GAF was 10. A GAF within the range of 41-50 is representative of a person in persistent danger of severely hurting self or others (e.g., recurrent violence) OR persistent inability to maintain minimal personal hygiene OR serious suicidal act with clear expectation of death.

An Emergency Assessment (Exhibits 36-49) dated [REDACTED] related to Claimant's psychological hospitalization was presented. The assessment was notable only for being consistent with other presented documentation.

Claimant stated that he is able to perform all daily activities without physical issues. Claimant noted that he can and does drive. Claimant noted that he showers only every other day.

The only presented basis for disability involved psychological impairments. The presented medical documentation verified a recent history of drug and alcohol abuse, two psychological hospitalizations related to suicidal thoughts and diagnoses for bipolar disorder and depression.

Based on the presented evidence, there is strong support for finding that Claimant was substantially impaired in early [REDACTED] Claimant's GAF of 10 as of [REDACTED] is

representative of a tremendously dangerous individual, in Claimant's case, to himself. The evidence established notable improvement in Claimant's circumstances as represented by a GAF of 50 less than one month later. Claimant conceded significant improvement in his psychological condition since receiving treatment from his current psychological provider. Claimant noted that he has not relapsed into drug or alcohol abuse and has generally felt much better. Though Claimant's GAF has substantially improved, it is not the best evidence of Claimant's ability to perform basic work activities; that is best shown by the MRFCA.

Claimant's treating psychiatrist found Claimant no worse than moderately limited markedly in all of the listed 20 work-related abilities. Claimant was considered markedly limited in 5 listed areas, not significantly limited in 7 abilities and somewhere in between not significantly and moderately limited in 8 abilities. A "marked limitation" is defined by the DHS form as appropriate when the evidence supports the conclusion that the individual cannot usefully perform the activity. "Moderately impaired" is defined as when the evidence supports the conclusion that the individual's capacity to perform the function is impaired.

Generally, marked limitations are representative of a person with a significant impairment of basic work activities, moderate limitations are not. Though Claimant undoubtedly has many real obstacles to performing work activities, the evidence supports a finding that Claimant's obstacles are not expected to last for a period of 12 months. Claimant's improvement since [REDACTED] supports a finding that Claimant's impairment have not lasted, and will not last, for a period of longer than 12 months. It is found that Claimant is not disabled due to a failure to establish that Claimant suffers a disability which is expected to last beyond 12 months. Accordingly, the DHS denial of Claimant's MA benefit application on the basis that Claimant is not a disabled individual is found to be proper.

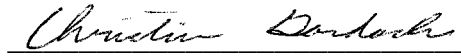
It should be noted that Claimant has two minor children from which he is currently separated. There was some evidence that Claimant might be reunited with his children as a primary caretaker in the future. If Claimant is again to become a primary caretaker to his minor children, he may be eligible for MA benefits as a caretaker. Claimant is encouraged to reapply for MA benefits should he become reunited with his children as a caretaker.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA benefits to Claimant based on a determination that Claimant was not disabled.

201235691/CG

The actions taken by DHS are AFFIRMED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 14, 2012

Date Mailed: May 14, 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.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

201235691/CG

cc:

