

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-39607
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 14, 20
Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 hearing was held in Detroit, Michigan on May 14, 2012. The Claimant appeared and testified. [REDACTED], Assistance Payments Worker also appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") 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. The Claimant submitted an application for public assistance seeking MA-P and retro MA-P on November 7, 2011.
2. On February 1, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 3)
3. The Department notified the Claimant of the MRT determination on February 3, 2012.
4. On February 9, 2012, the Department received the Claimant's timely written request for hearing.

5. On April 18, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on May 16, 2012, which ordered the Department to obtain Claimant's treatment records [REDACTED] a copy of a EMG [REDACTED] a copy of the [REDACTED] performed on May 19, 2012, on behalf of the SSA and a DHS 49 E from Claimant's psychiatrist at [REDACTED]. The Department was also to submit Claimant Exhibits 1 and 2, (ct scan and COPD test), respectively, admitted as new evidence at the hearing. This new evidence was not provided by the Department. No evidence as ordered by the Interim Order was submitted by the Department.
7. The Claimant alleged physical disabling impairments due to pain in his lower back (due to a pinched nerve and ruptured disc), and Carpal Tunnel Syndrome in both hands and wrists.
8. The Claimant alleged mental disabling impairment(s) including severe panic attacks and Post Traumatic Stress Syndrome.
9. At the time of hearing, the Claimant was [REDACTED] years old, with an [REDACTED] birth date; was 5'11" in height; and weighed 185 pounds.
10. The Claimant completed school through the 10th grade and did obtain a GED. The Claimant has an employment history working as a general laborer for temporary services performing unskilled work, including press operator, demolition, pouring basement concrete work, general carpentry, brick masonry, landscaping, mowing lawns and janitorial work mopping floors.
11. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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").

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it 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 are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to

perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 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) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability based on mental disabling impairments from panic disorder with agoraphobia. The Claimant alleges physical disability based on physical impairments from pain in his lower back due to a pinched nerve and ruptured disc, as well as Carpel Tunnel Syndrome (with tingling and numbness) in both hands and wrists.

The mental status exam completed as part of the evaluation indicated that Claimant's mood was euthymic, psychomotor activity was hyperactive, attention and concentration was impaired, as was judgement. The GAF score was 50.

On [REDACTED] a Mental Residual Functional Capacity Assessment was also completed. The Claimant, in the category Social Interaction, was markedly limited in 3 of the 5 categories with regard to his ability to interact appropriately with the general public, his ability to accept criticism and respond appropriately to criticism from supervisors, and also the ability to get along with co-workers and peers without distracting them or exhibiting behavioral extremes. Under Adaption, Claimant was markedly limited in ability to travel in unfamiliar places or use public transportation and ability to set realistic goals or make plans independently. Exhibit 1 pp6.

Under Sustained Concentration and Persistence, the Claimant was markedly limited in ability to maintain attention and concentration for extended periods, ability to work in coordination with or proximity to others without being distracted by them, and lastly, was markedly limited in his ability 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. The Claimant was able to carry out simple one of two step instructions. Moderately limited in carrying out detailed instructions, ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances. (Exhibit 1 pp5)

In the Category Understanding and Memory, the Claimant was evaluated as not significantly limited in all three benchmarks, with respect to understanding and remembering detailed instructions, work like procedures and locations and one or two step instructions.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some objective medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months, therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

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, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts mental disabling impairments due to panic disorder with agoraphobia. The Claimant also alleges physical disabling impairments from pain in his lower back pain due to a pinched nerve

and ruptured disc as well as Carpal Tunnel Syndrome (with tingling and numbness) in both hands.

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 distractability; 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 this case, the record reveals that Claimant was initially evaluated by a psychiatrist in [REDACTED], and was given a diagnosis of panic disorder with agoraphobia. The GAF score was 50. The results of the Mental Residual Functional Capacity found the Claimant markedly limited in 8 of the 22 categories and not significantly limited in 3 categories. The Claimant received an Axis I primary diagnosis of panic disorder with agoraphobia. As part of this examination, the secondary diagnosis noted Amph/coc/hal/inhal/opiod/other induced mood disorder under Axis I. Exhibit 1 pp 60.

The Claimant has had his sleep affected as a result of his mental impairments. He has reported weight loss. Claimant was noted as hyperactive in the psychiatric exam notes, and noted racing thoughts on his Activities of Daily Living Questionnaire. The Claimant also has marked limitations with regard to Sustained Concentration and Persistence and Social Interaction. The Claimant also credibly testified that he cannot stay around groups of people without having panic attacks (consistent with his psychiatric diagnosis). Based upon the foregoing, the requirements of 12.04 A1 are met.

The exam also noted an extensive history of drug abuse by the Claimant, starting in early teenage years. In reviewing cases where drug abuse is evident, the undersigned must determine if drug addiction is a contributing factor, material to the determination of

disability. In making this determination, the question is whether the current diagnosis of panic disorder with agoraphobia would remain if drug use and abuse were stopped. The Claimant was incarcerated for 18 months, at which time he withdrew from drug use and was placed on medication for his mental impairments (which continued throughout his incarceration and during his psychiatric treatment). In this matter, given the Claimant's history, the fact that a parent is schizophrenic and the fact that the examining psychiatrist found that Claimant's insight into his mental illness and need for medications and refraining from substances of abuse is poor, it would appear that even if drug abuse and use were stopped, the underlying mental impairment of panic disorder and agoraphobia would remain. Thus, substance abuse and use is not a material contributing factor to the Claimant's mental disabling impairments. 20 CFR 416.935.

As a result, the records and testimony demonstrate that the Claimant has marked restrictions in daily living and social functioning, based upon the Mental Residual Functional Capacity evaluation; and has a GAF of 50, and thus 12.04 B(1)(2) and (3) have been satisfied. Ultimately, based on the medical evidence, the Claimant's impairment(s) meet/ meets, or is the medical equivalent of, a listed impairment within 12.00, specifically 12.04.

The Department did not provide additional psychiatric medical evidence as ordered by the Interim Order, and in light of the Claimant's ongoing treatment for continuing mental impairments and documented medical impairment, the undersigned has determined to resolve any ambiguity in favor of the Claimant. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required. Listing 1.01 was also considered, but in light of the finding that Claimant meets a listing for 12.04A Affective Disorders, the analysis under 1.01 is unnecessary.

In this case, the Claimant is found disabled for purposes of the MA-P program.

DECISION AND ORDER

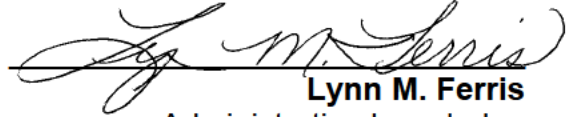
The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the November 7, 2012 application, and any retroactive months, to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
- 3.

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4. The Department shall review the Claimant's continued eligibility in September 2013 in accordance with Department policy.


Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: September 19, 2012

Date Mailed: September 19, 2012

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.

LMF/hw

cc:

