

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-45960
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 20, 2012
County: Wayne (82-55)

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 June 20, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) programs?

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 material fact:

1. On January 27, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to October 1, 2011.
2. On March 30, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 3, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty [REDACTED] has a ninth-grade education. Claimant was enrolled in special education classes. He has a learning disability and cannot read or write.

5. Claimant last worked in 1998 as a food preparer. Claimant's relevant work history consists exclusively of unskilled medium-exertional work activities.
6. Claimant has a history of adjustment disorder, borderline personality disorder, depression and anxiety. Claimant's onset date is [REDACTED].
7. Claimant was never hospitalized as a result of his impairments.
8. Claimant currently suffers from adjustment disorder, borderline personality disorder, depression and anxiety.
9. Claimant has severe limitations of his ability to function at a social and occupational level. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the whole record, 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 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.

The Administrative Law Judge concludes and determines that Claimant **IS NOT DISABLED** for the following reason (select ONE):

1. Claimant is engaged in substantial gainful activity.

OR

2. Claimant's impairment(s) do not meet the severity and one-year duration requirements.

OR

3. Claimant is capable of performing previous relevant work.

OR

4. Claimant is capable of performing other work.

The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason (select ONE):

1. Claimant's physical and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent. State the Listing of Impairment:

12.08 Personality disorders:

A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior:

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 III, Appendix 1, Subpart P, Listing of Impairment
12.08 Personality Disorders.

OR

2. Claimant is not capable of performing other work.

The following is an examination of Claimant's eligibility as required by the Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of Michigan is required to use the five-step Medicare eligibility test in evaluating applicants for the State's Medicaid disability program.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 1998. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity. Department Exhibit 1, p. 12.

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date of borderline personality disorder is [REDACTED], when he was diagnosed by [REDACTED]. Claimant has treated for this impairment with [REDACTED] and with a psychotherapist since he was diagnosed. He takes prescribed medications, including Vistaril, for his impairments. At the hearing on June 20, 2012, Claimant testified that his condition is continuing, and it is worsening in that his mind is less focused than before. *Id.*, pp. 16-17.

Based on the above evidence of record, it is found and determined that Claimant's condition is of sufficient severity and duration to meet the requirement of the second step of the eligibility evaluation. The third step of the evaluation will be considered next.

Turning to the third requirement for MA eligibility approval, the factfinder must determine if Claimant's impairment is listed as an impairment in the federal Listing of Impairments found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case, it is found and determined that Claimant's impairment meets the definition in Listing 12.08, Personality disorders. Listing 12.08 is set forth above in full.

In this case, Claimant was diagnosed with adjustment disorder with mixed anxiety and depressed mood, and borderline personality disorder, by psychiatrist [REDACTED] on [REDACTED]. Claimant testified he has seen [REDACTED] monthly since then in order to obtain prescription refills. Claimant also testified that he sees a therapist on a regular basis. Claimant's first therapist was [REDACTED], and he currently sees [REDACTED]. Claimant takes prescribed anti-anxiety medication, Vistaril. *Id.*

[REDACTED] completed a Department Mental Residual Functional Capacity Assessment for Claimant on [REDACTED]. This Department form contains twenty types of social and occupational mental activities, and the person preparing the form rates each mental

activity according to a four-point scale: (1) not significantly limited, (2) moderately limited, (3) markedly limited, or, (4) no evidence of limitation in this category. ██████████ evaluated Claimant as markedly limited in all twenty categories. *Id.*, pp. 18-19.

It now becomes necessary to determine whether the evidence presented in this case is sufficient to meet the definition requirements of Listing of Impairment 12.08 Personality disorders, set forth in full above. If the definitional requirement of this third step is met, then Claimant becomes eligible for MA at this step. If the definition is not shown in the evidence presented, then further analysis must be made through the fourth and fifth steps.

Looking at the definition of personality disorders in Listing of Impairment 12.08, the first requirement is that the personality traits are inflexible, maladaptive, and cause either significant impairment in social or occupation functioning or subjective distress. Based on the analysis presented by ██████████ in the Mental Residual Functional Capacity Assessment, and on all of the evidence in this case taken as a whole, it is found and determined that Claimant's personality traits are inflexible in that they are not improving; indeed, as Claimant testified, his focus is deteriorating. Second, it is found and determined that Claimant's personality traits are maladaptive in that he is markedly limited in twenty out of twenty mental activities relating to understanding, memory, sustained concentration and persistence, social interaction and adaptation. The category "markedly limited" is the most severe and serious limitation available on the Department assessment form. *Id.*

The information on the assessment was corroborated by Claimant's testimony at the hearing. Therefore, it is found and determined that Claimant's personality traits are maladaptive as described in Listing of Impairment 12.08.

Next, an examination is required as to whether Claimant's personality traits cause either significant impairment in social or occupational functioning or subjective distress. The assessment form describes twenty types of functioning, and Claimant received the most severe rating from his psychiatrist in all twenty categories. Accordingly, it is found and determined that this requirement of the 12.08 Listing definition has been met.

Next, in order to meet the impairment definition in Section 12.08, it is necessary to determine if Claimant exhibits one of the six characteristics listed in Section 12.08A above. ██████████ diagnosed, in addition to borderline personality disorder, the assessment of Adjustment Disorder With Mixed Anxiety and Depressed Mood. *Id.*, p. 17. Claimant reported to ██████████ that he experienced sadness, insomnia and anxiety. ██████████ has prescribed Vistaril, an anti-anxiety medication, for Claimant since August 2011. Claimant also receives regular psychotherapy treatment from a therapist at ██████████. It is found and determined, based on all of this evidence and on the entire record as a whole, that Claimant meets the definition of Section 12.08A4, Persistent disturbances of mood or affect.

One final determination must be made in order to qualify for MA with a personality disorder, and this requires an analysis of Section 12.08B, set forth in full above. In order for Claimant to qualify for disability benefits on the basis of a personality disorder, Claimant must establish two of the four features described in Section 12.08B. Based on the assessment by [REDACTED], Claimant's testimony, and all of the evidence in this case considered as a whole, it is found and determined that Claimant meets the descriptions of B2, Marked difficulties in maintaining social functioning, and B3, Marked difficulties in maintaining concentration, persistence or pace. This conclusion is based on the marked difficulties identified by [REDACTED] in the assessment form.

In the assessment form, [REDACTED] stated with regard to maintaining social functioning, that Claimant was markedly limited in five of five categories: 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, and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. *Id.*, p. 19.

With regard to Claimant's difficulty in maintaining concentration, persistence and pace, [REDACTED] indicated that Claimant was markedly limited in three of three categories: the ability to carry out simple, one of (*sic*) two-step instructions, the ability to carry out detailed instructions, and the ability to maintain attention and concentration for extended periods. *Id.*, p. 18.

In addition, Claimant's responses at his Department interview and his testimony at the hearing are consistent with the medical diagnosis of personality disorder. Claimant advised the Department on March 14, 2012, that he has a learning disorder, he is depressed and experiences anxiety and mental distress, he is in treatment with [REDACTED] and is taking prescribed medication. He testified that his mental focus is deteriorating and is worse than it was before. *Id.*, p. 9.

Claimant testified that his next appointment with [REDACTED] is [REDACTED].

Based upon all of the above evidence of record and the entire record considered as a whole, it is found and determined that Claimant meets the requirements of Listing of Impairment 12.08 Personality disorders, or its equivalent. Claimant has presented evidence of an impairment which is consistent with or equivalent to Listing of Impairment 12.08. It is found and determined that Claimant has satisfied the requirements of the third step of the MA eligibility approval process and is, therefore, eligible for MA and retroactive MA benefits.

In conclusion, based on the Findings of Fact and Conclusions of Law above, Claimant is found to be

NOT DISABLED DISABLED

for purposes of the MA program. The Department's denial of MA benefits to Claimant is

AFFIRMED **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 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, Claimant 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, and for the reasons stated on the record finds that Claimant

DOES NOT MEET **MEETS**

the definition of medically disabled under the Medical Assistance and State Disability Assistance program(s) as of the onset date of August 17, 2011.

The Department's decision is

AFFIRMED **REVERSED**

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate processing of Claimant's January 27, 2012, application, to determine if all nonmedical eligibility criteria for MA, retroactive MA and SDA benefits have been met.
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA, retroactive MA and SDA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy.
3. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate procedures to schedule a redetermination date for review of Claimant's continued eligibility for program benefits in July 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: June 25, 2012

Date Mailed: June 26, 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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JL/pf

cc:

