

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-47250
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: July 16, 2012
County: Wayne (82-41)

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 July 16, 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 17, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to October 1, 2011.
2. On April 13, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 23, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-six [REDACTED] has a sixth-grade education.
5. Claimant last worked in 2009 as an assembly line worker. Claimant also performed relevant work as a dishwasher and a busboy in a restaurant.

Claimant's relevant work history consists exclusively of unskilled medium-exertional work activities.

6. Claimant has a history of major depressive disorder with psychotic features, diabetes, hypertension and asthma. His onset date is [REDACTED] (major depressive disorder with psychotic features).
7. Claimant was never hospitalized as a result of his impairments.
8. Claimant currently suffers from major depressive disorder with psychotic features, diabetes, hypertension and asthma.
9. Claimant has severe limitations of his non-exertional mental capacity. 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(s):

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...

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 distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusion 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 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.

OR

2. Claimant is not capable of performing other work.

The following is an examination of Claimant's eligibility required by the federal Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of Michigan is required to use the federal Medicare five-step 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 2009. 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. 53.

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 is [REDACTED], which is the date he began psychiatric treatment. Claimant's medical records indicate he continued treatment until at least [REDACTED]. The diagnosis of [REDACTED] was Major depression with psychotic features. *Id.*, pp. 6-14.

Based on this information of record, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second eligibility requirement.

Turning now 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 12.04, Affective disorders. This Listing is set forth above in full.

In order to qualify for benefits based on a depressive syndrome, an application must demonstrate at least four of nine listed characteristics and meet other criteria as well. Listing 12.04A1 identifies nine characteristics of depressive disorder: anhedonia or pervasive loss of interest in almost all activities, appetite disturbance with change in weight, sleep disturbance, psychomotor agitation or retardation, decreased energy, feelings of guilt or worthlessness, difficulty concentrating or thinking, thoughts of suicide, and hallucinations, delusions, or paranoid thinking. Listing 12.04A1.

In this case, Claimant's medical records establish that he presents five of the nine possible features of depressive syndrome. [REDACTED] notes anhedonia/pervasive loss of interest in almost all activities on [REDACTED] sleep disturbance is mentioned in ten sessions; psychomotor agitation (restlessness, animated) in three sessions; difficulty concentrating or thinking in one session; and hallucinations, delusions or paranoid thinking in eight sessions. *Id.*

It is found and determined that these findings in Claimant's psychiatric treatment records satisfy the requirements of Listing 12.04A1. Claimant has demonstrated that he meets the requirements of this portion of Listing 12.04, and it is next necessary to look to section 12.04B to determine if Claimant meets the requirements of this subsection.

Subsection B requires that a customer have at least two of four impediments: marked restriction of activities of daily living, marked difficulties in maintaining social functioning, marked difficulties in maintaining concentration, persistence or pace, and repeated episodes of decompensation, each of extended duration. Listing of Impairments 12.04B 1-4.

This information can be found in the Mental Residual Functional Capacity Assessment, DHS Form 49-E. In this case, Claimant's therapist, [REDACTED], completed an Assessment of Claimant. Department Exhibit 1, pp. 27-28.

The Assessment of Claimant contains descriptions of twenty different types of mental activity, grouped in four sections: understanding and memory, sustained concentration and persistence, social interaction and adaptation. The evaluator can indicate four degrees of limitation for each type of mental activity: not significantly limited, moderately limited, markedly limited, and no evidence of limitation in this category.

With regard to social functioning, which is the second item in Listing 12.04B, there are five topics. The therapist ranked Claimant moderately limited in three areas: the ability to interact appropriately with the general public, the ability to ask simple questions or request assistance, and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. With regard to the other two areas, she stated he was markedly limited. These two categories are the ability to accept instructions and respond appropriately to criticism from supervisors, and the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. *Id.*, Listing 12.04B2.

Next, with regard to the third item in Listing 12.04B, marked difficulties in maintaining concentration, persistence or pace, the Assessment form contains eight areas where difficulty might be demonstrated. The eight areas are: the ability to carry out simple, one or two-step instructions, the ability to carry out detailed 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 work in coordination with or proximity to others without being distracted by them, the ability to make simple work-related decisions, and the 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. *Id.*, Listing 12.04B3.

Claimant's therapist has rated him markedly limited in all eight of these mental activities.

Based on all of the evidence of record, it is found and determined that Claimant meets the requirements of Listing 12.04B, subsections 2 and 3, and, therefore, Claimant has satisfied all of the Listing 12.04 requirements. It is found and determined that Claimant has an affective disorder, depressive syndrome, as defined in Listing 12.04A, or he has the equivalent of it. *Id.*

Claimant, therefore, has established eligibility for Medicaid based on a mental impairment. As Claimant is found by the undersigned to be eligible for MA based solely on a mental impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence.

In conclusion, based on the Findings of Fact and Conclusions of Law above, the 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

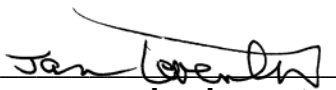
the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the onset date of April 14, 2011.

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 17, 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 August 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: July 18, 2012

Date Mailed: July 18, 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:

