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



Reg No.: 2012-47818 Issue No.: 2009 Case No.: Hearing Date: July 16, 2012 Macomb County DHS (20)

# ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

## 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 conducted from Detroit, Michigan on Monday, July 16, 2012. The Claim ant appear ed and tes tified. appeared on behalf of the Department of Human Services ("Department").

## **ISSUE**

Whether the Department proper ly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

## FINDINGS OF FACT

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

- 1. The Claimant submitt ed an application for public assistance seeking MA-P benefits on December 8, 2011, retroactive to September 2011.
- 2. On March 19, 2012, the Medical Revi ew Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
- 3. On March 22, 2012, the Department notified the Clai mant of the MRT determination.
- 4. On April 19, 2012, the Department re ceived the Claimant's written request for hearing.

- 5. On June 14, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
- 6. The Claimant alleged physical dis abling impairments due to back pain and radiculopathy.
- 7. The Claimant alleged mental disabling impairments due to bipolar disorder and schizoaffective disorder.
- 8. At the time of hearing, the Claim ant was years old wit h an birth date; was 6' in height; and weighed 200 pounds.
- 9. The Claimant has a limited education with an employment history in warehousing and stocking.
- 10. 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 Independenc e Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge s Administrative Manual ("BAM"), the Bridges Elig ibility 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 im pairment which can be expected to result in death or which has lasted or can be expect ed 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 esta blish it through the use of competent medical evidence e from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities or a bility to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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, t he 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 ext ent 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 fivestep analysis requires the trier of fact to cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functiona I capacity along with vocational factors (i .e. age, education, and work experienc e) 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 а 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 indi vidual'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 f unctional capacity is the most an indiv idual can do d espite the limitations based on all rele vant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity ass essment is ev aluated at both steps four and five. 20 CFR 41 6.920(a)(4). In determinin g disa bility, an in dividual's functional c apacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, di sability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the indiv idual has t he responsibility to prove disability. 20 CFR 4 16.912(a). An impair ment or combination of impairments is n ot severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a ). The in dividual has the resp onsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating m ental impairments, a special technique is utilized. 2 0 CF R 416.920a(a). First, an i ndividual's pertinent sym ptoms, signs, a nd 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 s ignificant history, laboratory findings, and functional limitat ions. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to whic h the impairment(s) interferes with an individual's ability to func tion independently, appropriately , effectively, and on a

sustained basis. *Id.;* 20 CFR 416.920a(c)(2). Chronic m ental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is c onsidered. 20 CFR 416.920a(c)(1). In addi tion, four broad functional areas (activities of daily living; social f unctioning; concentration, persistence or pace; and episodes of decompensat ion) are consider ed when deter mining an indiv idual'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 fi ve 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 repr esents a degree of limitation t hat 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 lis ted mental disorder is made. 20 CF R 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual function on al capacity is assessed. 20 CF R 416.920a(d)(3).

As outlined above, the first step looks at the i ndividual'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 impa irment(s) is considered under St ep 2. The Claimant bears the burden to pr esent sufficient objective medical evidenc et o substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 416. 920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it signific antly limits an in dividual's physical or mental ability to do basic work activities regardless of age, education and work exper ience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

- 1. Physical functions such as wa lking, 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.
- ld.

The second step allows for dismissal of a di sability claim obviously lacking in medical merit. *Higgs v Bowe n,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen o ut 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 qu alifies 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 Cla imant alle ges di sability due to bac k pain, rad iculopathy, bipolar disorder, and schizoaffective disorder.

On an MRI of the spine revealed L4-5 paramedian t o intraforaminal disc herniation leading to mild effacement on the ventral thecal sac and exiting left L4 nerve root and mild degener ative changes at the mid and lo wer lumbar spine, particularly involving facet joints at L3-4 and L4-5.

On the Claim ant's treating psyc hiatrist wrote a letter confirming treatment/diagnoses of bipol ar disorder, depression, and anxiety. T he Claimant's degenerative disc disease, chronic back pain, and spasms were also n oted. The Claimant was found to be disabled.

In the Claimant overdosed on prescribed medication.

On the Claimant sought treatment for severe low back pain and suicidal ideations. The Claimant's GAF at admission was 15. The discharge sum was not submitted and it was unclear whet her this admission led to the admission (see below).

On suicidal ideations. F eelings of helplessness, hopelessne ss nd worthles sness were documented. The Claimant was a discharged on mood disorder (not otherwise specified " NOS"), ps ychosis (NOS), cannabis abus e, benzodiazepine abuse, and opiate abuse. Bipolar disorder and schizophrenia (paranoid type) were not ruled out.

On **Claim ant's long history of major de** Claimant was disc harged on **Claim ant's long history of major de** claimant was disc harged on **Claim ant ant and history of bipolar disorder** depressed, severe with psychosis and mar ijuana abuse. The Claimant's GAF was 45 and his insight and judgment were marginal.

On **Construction**, the Claimant was adm itted to a psychiatric hospital with thoughts of suicide and a GAF of 25. Feel ings of hop elessness, helplessness, sleep disturbance, and auditory hallucinations were doc umented. During his stay, the Claimant was also t reated for his low ba ck pain an d spasms. The Claimant was discharged on **Construction** with the diagnoses of schizoaffective disorder, bipolar type, severe with a GAF of 42.

As previously noted, the Claim ant bears t he burden to present sufficient objective medical evidence to s ubstantiate the alleged disabling impairment(s). As summarized above, the Claimant has pres ented medical evidence establishing that he does h ave some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant's basic work activities. Further, the impairments have la sted continuous ly for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claim ant has alleged physical and mental disabling impairments due to back pain with radiculopathy, bipolar disorder, and schizoaffective disorder.

Listing 1.00 defines musculoskeletal syst em impairments. Disor ders of the musculoskeletal system may re sult from her editary, congenital, or acquired pathologic processes. 1.00A. Impairments may resu It from infectious , inflammatory , or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic dis eases. 1.00A. Regardle ss of the cause(s) of a musculoskeleta impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sus tained basis for any reason, including pain associated with the underlying musculoskeletal impairment. 1.00B2a. The inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities. 1.00 B2c. In other words, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities 1.00B2c To use the upper ex tremities effectively, an i ndividual must be capable of sustaining such functions as reaching, pus hing, pulling, grasping, and fingering to be able to c arry out activities of daily living. 1.00B2c. Examples in clude the inability to

prepare a simple meal, feed oneself, take care of personal hygien e, sort/handle papers/files, or place items in a cabinet at or about the waist level. 1.00B2c. Pa in or other symptoms are also considered. 1.00B2d.

Categories of Musculoskeletal include:

- \* \* \*
- 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc dis ease, facet arthritis, vertebral fracture), resulting in compromise of a ner ve root (including the cauda equine) or spinal cord. With:
  - A. Evidence of nerve root compression charact erized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower ba ck, positive straight-leg raising test (sitting and supine); or
  - B. Spinal arachnoiditis, confirmed by an oper ative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dys esthesia, r esulting in the need for changes in position or post ure more than onc e every 2 hours; or
  - C. Lumbar spinal stenosis res ulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradic ular pain and weak ness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

Listing 12.00 encompasses adult mental disorder s. The evaluation of disability on the orders requires doc umentation of a medically determinable basis of mental dis impairment(s) and consideration of the degr ee in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impair ment(s) of the required duration must be established through medical evidence cons isting of sy mptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evid ence to (1) establis h the presence of a medically determinable ment al impairment(s), (2) asse ss the degree of functional limitation t he impair ment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The ev aluation of disability on the basis of mental disorder s

requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the indiv idual's ability to work consideratio n, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

Listing 12. 04 defines affective disorders as being c haracterized by a disturbance of mood, accompanied by a full or partial m anic 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, ei ther 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 activ ities that have a h igh probab ility 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 maintain ing concentration, persistence, or pace; or
  - 4. Repeated episodes of decompensation, each of extended duration;

OR

- C. Medically documented history of chr onic affective disorder of at least 2 years' duration that has caused more t han a minimal limitation of ability to do basic work activities, with sy mptoms 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 diseas e process that has resulted in s uch marginal adjustment that even minimal increase in mental demands or change in the env ironment would be predict ed to cause the individual to decompensate; or
  - 3. Current history of 1 or more ye ars' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In this case, the objective findings (MRI) show degenerative disc disease at L3-4 and L4-5 with nerve root impingement at the exiting L4 nerve root. As a result, the Claimant is unable to ambulate effectively. The evidence also shows at least three hospitalizations for suicide ideations. Los s of interest in almost all activites, sleep disturbance, decreased energy, feelings of worthless ness, and hallucinations are also documented. The Claimant has restrictions on activities of daily living noting repeated episodes of decompensation. In consider ation of the entire re cord, the Claimant's combined physical and mental impairments meet, or are the medical equivalent thereof, Listing 1.04 and 12.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assist ance program, which pr ovides financial assistance for disabled persons, was established by 2004 PA 344. The Depa rtment administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policie s are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a phys ical or menta 1 impairment which m eets federal SSI dis ability standards for at least ninety days.

Receipt of SSI or RSDI benefit s based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disa bled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit 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 December 8, 2011, retroactive to September 2011, to determine if all other non-medical criteria are met and inform the Claimant of the det ermination in accordanc e with Department policy.
- 3. The Department shall supplement for lo st benefits (if any) that the Claimant was entitled to receiv e if otherwise elig ible and qualified in acc ordance with Department policy.
- 4. The Department shall review the Claimant's continued eligibility in September 2013 in accordance with Department policy.

Collein M. Mamilka

Colleen M. Mamelka Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: August 7, 2012

Date Mailed: August 7, 2012

**NOTICE:** Michigan Administrative Hearing Syst em (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 Dec ision and Order. MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 ti mely 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 <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> 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

Re consideration/Rehearing Request P. O. Box 30639 Lansing, Michigan 48909-07322

#### CMM/cl

