

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-55206
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: August 13, 2012
County: Macomb (50-36)

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 August 13, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED]. 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 March 30, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to December 1, 2011.
2. On May 17, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On May 23, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-four [REDACTED] has a high-school education. Claimant was a Special Education student with a learning disability.

5. Claimant last worked in 2007 as an assembly line worker. Claimant also performed relevant work as a truck driver and a welder. Claimant's relevant work history consists exclusively of unskilled, medium-exertional work activities.
6. Claimant has a history of psychotic disorder. His onset date is [REDACTED].
7. Claimant was hospitalized in [REDACTED] and twice in [REDACTED] as a result of psychotic disorder. The discharge diagnosis was Mood disorder, not otherwise specified, and dependent personality traits.
8. Claimant currently suffers from Mood disorder, not otherwise specified, and dependent personality traits.
9. Claimant has severe limitations of his ability to concentrate, remember things, and control impulsive and violent behavior. 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 that is available in significant numbers in the national economy.

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):

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, 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;
 - ...
 - d. Psychomotor agitation or retardation;
 - e. Decreased energy;
 - ...
 - g. Difficulty concentrating or thinking.

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.

(Excerpted citation.)

OR

2. Claimant is not capable of performing other work that is available in significant numbers in the national economy.

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 Michigan's Medicaid disability program.

First, the claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2007. Accordingly, it is found and determined that Claimant is not engaged in substantial gainful activity, and the first requirement of eligibility is fulfilled.

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]. In [REDACTED], Claimant was admitted at [REDACTED] a psychiatric patient for treatment of psychosis and depression.

Since 2008, Claimant has lived in the basement of his parents' home. He does not live independently and is dependent on his parents for financial and emotional support. He leaves the home rarely, only for appointments and to visit a neighborhood bar once a week. He has had violent outbursts and destroyed furniture in the family home.

In [REDACTED], Claimant had two consecutive hospitalizations, with a final diagnosis of Mood disorder, not otherwise specified. Department Exhibit 1, p. 27.

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, and its subparts, sections 12.04A and B. This Listing is set forth above in excerpted form.

Listing 12.04 opens with a definition of depression as a full or partial depressive syndrome, i.e., a prolonged emotion that colors the whole psychic life. The Listing sets forth various features of depression in two lists, which are subparts A and B. The first list (subsection 12.04A) requires that Claimant demonstrate four of nine features. The second list (subsection 12.04B) requires that two of the four listed features must be present.

With regard to the requirements of 12.04A, it is found and determined that Claimant presents the following four features of depressive syndrome:

- a. Anhedonia or pervasive loss of interest in almost all activities;
- d. Psychomotor agitation or retardation;
- e. Decreased energy;
- g. Difficulty concentrating or thinking.

First with regard to pervasive loss of interest, Claimant has lived a secluded, isolated lifestyle in his parents' basement for the past five years. He goes out once a week to a neighborhood bar, but when he is at the bar, he does not actively socialize. He does not like being around other people. Department Exhibit 1, pp. 4, 19, 36, 40.

Second, with regard to psychomotor agitation, Claimant has experienced anxiety and emotional outbursts, including destroying furniture and injuring himself in the process. He becomes agitated to the extent that his parents are in fear of his emotional outbursts. *Id.*, pp. 3, 4, 26, 35, 36, 42-48.

Third, with regard to decreased energy, Claimant rarely leaves his parents' home except for appointments. His parents support him financially and emotionally. He exercises less and has gained about 60 lbs. in the past few years. He reports that he has no motivation to do anything. *Id.*, pp. 4, 8, 14, 17.

Fourth, with regard to difficulty concentrating and thinking, Claimant has trouble concentrating, remembering things, and making decisions. He is not capable of completing paperwork himself. In interpersonal contact, he has poor eye contact, looks downward for the most part, and responds in a delayed manner. He exhibited anxiety, anger and paranoia. He is 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; in his ability to respond appropriately to change in the work setting; and in his ability to set realistic goals or make plans independently of others. He is vague and evasive when recounting his history to health care providers. *Id.*, pp. 3, 7, 19.

In light of all of these reported, documented findings, it is the conclusion of the factfinder that Claimant meets the first set of requirements of the depressive syndrome, as set forth in Listing of Impairment 12.04A. It is next necessary to determine if Claimant demonstrates two of the behavior requirements described in Listing subsection 12.04B.

There are four behavior requirements in Listing subsection 12.04B:

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.

Having reviewed all of the testimony and all of the documents and considered them as a whole, it is found and determined that Claimant meets at least two of the four behaviors in subsection 12.04B, i.e., he has demonstrated marked difficulties in maintaining social functioning, and he has marked difficulties in maintaining concentration, persistence, or pace. First, with regard to social functioning, Claimant's medical records document that he lives in an isolated manner in his parents' basement, he does not socialize with his parents or others, and although he visits a neighborhood bar once a week, he stays by himself while he is there. Claimant testified he experiences aggravation with people, and gets upset and removes himself from the situation for an hour. He could not explain why he experienced episodes of aggravation. Claimant is treating with a psychiatrist and a psychotherapist and is prescribed Zoloft for depression and anxiety. [REDACTED] testified that he was dismissed from his job of fourteen years due to his mental impairment and was also dismissed from another job. She testified that he cannot be around her and his father.

Second, with regard to marked difficulties in maintaining concentration, persistence or pace, Claimant's medical records document that he reported difficulty with concentration and memory to his therapist, [REDACTED]. The therapist's assessment of Claimant's mental residual functional capacity is that Claimant is moderately limited in his ability to carry out detailed instructions and his ability to maintain attention and concentration for extended periods. He also wrote that Claimant was markedly limited in the ability to perform at a consistent pace without an unreasonable number and length of rest periods.

Claimant's hospital records indicate he was vague and evasive with regard to his history. Claimant could not give a rational explanation as to why he has not worked in the past seven years. Claimant's mother testified that when he is asked to perform a small chore at home, he works very slowly, sometimes redoing the task as many as 100 times. She stated she felt his behavior while doing work was "not normal."

Based on all of the above testimony and documentation taken as a whole, it is found and determined that Claimant exhibits the behavioral features required in Listing 12.04 A and B. It is, therefore, found and determined that Claimant's mental impairment meets, or is equivalent to, the requirements of Listing of Impairment 12.04A1, Affective disorders, depressive syndrome. Claimant has established eligibility for Medicaid based on his 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 programs as of the onset date of November 2000.

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 March 30, 2012, application, to determine if all nonmedical eligibility criteria for 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 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 September 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: August 20, 2012

Date Mailed: August 20, 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:

