

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

IN THE MATTER OF:

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Reg No.: 2012-61474
Issue No.: 2009
Case No.: ██████████
Hearing Date: October 15, 2012
Oakland County DHS (03)

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, October 15, 2012. Claimant appeared, along with ██████████ (mother) and ██████████ of Easter Seals, and testified. Participating on behalf of the Department of Human Services ("Department") was ██████████.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly 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 the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant submitted an application for public assistance seeking MA-P benefits on March 20, 2012.

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2. On May 25, 2012, the Medical Review Team (“MRT”) found Claimant not disabled. (Exhibit 1, pp. 8, 9)
3. The Department notified Claimant of the MRT determination on June 1, 2012. (Exhibit 1, pp. 2 – 4)
4. On June 20, 2012, the Department received Claimant’s written request for hearing. (Exhibit 1, pp. 6)
5. On August 10, 2012, the SHRT found Claimant not disabled. (Exhibit 2)
6. Claimant alleged physical disabling impairments due to shortness of breath acid reflux, and achalasia.
7. Claimant alleged mental disabling impairment(s) due to mood swings and depression.
8. At the time of hearing, Claimant was 41 years old with a [REDACTED] birth date; was 5’7” in height; and weighed approximately 170 pounds.
9. Claimant has the equivalent of a high school education with a limited employment history.
10. 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 416.913. 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 416.945(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). The individual has the responsibility 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 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, Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of 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 416.920(a)(4)(ii); 20 CFR 416.920(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 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:

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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, Claimant alleges disability due to shortness of breath, achalasia, acid reflux, mood swings, and depression.

In support of his claim, some older records from 2009 were submitted which documented treatment/diagnoses of achalasia, cardiospasm, hyperlipidemia, GERD, and depression.

On June 2, 2011, Claimant was found to be at low risk for suicide.

On June 3, 2011, Claimant was diagnosed with achalasia, cardiospasm, hyperlipidemia, GERD, depression, and substance-related disorder. Personality disorder was not ruled out. The Global Assessment Functioning ("GAF") was 55.

On June 13, 2011, Claimant was diagnosed with GERD.

On June 16, 2011, Claimant was diagnosed with achalasia and cardiospasms, and GERD.

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On July 7th and 19th, 2011, Claimant was treated/diagnosed with depression and anti-social personality disorder.

On July 26, 2011, Claimant attended a follow-up appointment for anxiety, appetite loss, depression, alcohol abuse, sleep disturbance, and stress. Claimant's adherence to prescribed treatment was noted. The diagnoses were depression, anti-social personality disorder. The GAF was 55.

On August 5, 2011, Claimant attended individual therapy.

On August 12, 2011, Claimant attended a follow-up appointment where he was diagnosed with depression and anti-social personality disorder. The GAF was 55.

On August 24, 2011, Claimant was treated/diagnosed with depression and anti-social personality disorder.

On August 29, 2011, Claimant was treated/diagnosed with GERD, achalasia, and cardiospasm.

On September 8, 2011, Claimant was treated/diagnosed with depression and anti-social personality disorder. Claimant's medications were increased.

On September 23, 2011, Claimant was treated/diagnosed with depression and anti-social personality disorder.

On November 18, 2011, Claimant attended a follow-up appointment where he was diagnosed with depression and anti-social personality disorder. The GAF was 68.

On February 27, 2012, Claimant was diagnosed with mood disorder (not otherwise specified), cannabis dependence, and anti-social personality disorder. The GAF was 55.

On March 9, 2012, a psychiatric evaluation was performed. The diagnoses were major depressive disorder (single, severe with psychosis), generalized anxiety disorder, post-traumatic stress disorder ("PTSD"), and cannabis dependence. The GAF was 45.

On March 12, 2012, a Psychiatric/Psychological Examination Report referred to a Psychiatric Evaluation but listed the diagnoses of mood disorder (not otherwise specified), alcohol intoxication, cannabis dependence, and anti-social personality disorder. The GAF was 55. The mental status evaluation noted auditory hallucinations and suicidal ideations.

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On this same date, a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in 12 of the 20 factors and moderately limited in 4 factors. Claimant was found not significantly limited in his ability to understand, carry-out, and remember one or two-step instructions; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, and in his ability to ask simple questions or request assistance.

On May 7, 2012, a medical review was completed. The Claimant's mood was dysphoric with suicidal ideations. The diagnoses were mood disorder (not otherwise specified), cannabis dependence, and anti-social personality disorder. The GAF was 55 with an unstable clinical status.

On June 20, 2012, a periodic review was performed. The Claimant's adherence to prescribed treatment was also noted. The Claimant was to continue with his outpatient treatment.

On July 2, 2012, a periodic medical review was completed. The Claimant's mood was dysphoric with suicidal ideations. The diagnoses were mood disorder (not otherwise specified), cannabis dependence, and antisocial personality disorder. The GAF was 55 with an unstable clinical status.

On August 8, 2012, a medication review was completed. The mental status evaluation revealed suicidal ideations. The diagnoses were mood disorder (not otherwise specified), cannabis dependence, and anti-social personality disorder. The GAF was 55 and the clinical status was improving.

On September 26, 2012, a period review was performed. The mental status examination revealed visual hallucinations, suicidal ideations, and dysphoric mood with constricted affect. The diagnoses were major depressive disorder (recurrent and severe with psychosis), mood disorder, cannabis dependence, and anti-social personality disorder. The GAF was 55 and the clinical status was unstable despite adherence to prescribed treatment.

On October 5, 2012, a Psychiatric/Psychological Medical Report was completed on behalf of the Claimant. The Claimant was found to be highly agitated, hostile, and difficult to engage. The Claimant was in contact with reality with limited insight and poor self-esteem. The diagnoses were mood disorder with psychosis and anti-social personality disorder. The GAF was 49 with a guarded to poor prognosis.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The

degree of functional limitation on the Claimant's activities, social function, concentration, persistence, or pace is moderate to markedly. The degree of functional limitation in the fourth area (episodes of decompensation) is a 3. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, 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 evidence confirms treatment/diagnoses of achalasia, cardiospasm, hyperlipidemia, GERD, depression, generalized anxiety disorder, anti-social personality disorder, PTSD, and cannabis dependence.

Listing 4.00 (cardiovascular system), Listing 5.00 (digestive disorders), and Listing 12.00 (mental disorders) were considered in light of the objective findings. There was no evidence to meet the intent and severity requirement of a cardiovascular or digestive listing. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree 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 impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, 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 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 evidence confirms treatment/diagnoses of major depressive disorder, recurrent, severe with psychosis. The evidence reveals, in part, sleep disturbance, thoughts of suicide, hallucinations, and loss of interest in almost all activities. Additionally, the records show marked limitations in areas of activities of daily living and social functioning. The most recent GAF score was 49 despite adherence to prescribed treatment. A GAF of 49 means serious symptoms or any serious impairment in social, occupational, or school functioning. The consultative evaluation in October 2012 found Claimant to be highly agitated and difficult to engage with limited insight and poor self-esteem. The prognosis was guarded to poor even after continued treatment. In light of the foregoing, it is found that Claimant's impairments meet, or are the medical equivalent thereof, a Listed impairment within 12.00 as detailed above. Accordingly, Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds 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 shall initiate processing of the March 20, 2012 MA-P application to determine if all non-medical criteria are met and inform Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.

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3. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review Claimant's continued eligibility in July 2014 in accordance with Department policy.



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

Date Signed: June 3, 2013

Date Mailed: June 4, 2013

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.

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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

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cc: [REDACTED]
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