

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-14444
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 6, 2012
DHS County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 held in Detroit, Michigan, on February 6, 2012. Claimant appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

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. The Claimant submitted an application for public assistance seeking MA-P benefits and SDA benefits on June 30, 2011.
2. On October 19, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 2,3).
3. The Department notified the Claimant of the MRT determination on November 14, 2011.
4. On November 28, 2011, the Department received the Claimant's timely written request for hearing.

5. On January 18, 2012, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2).
6. The Claimant alleged mental disabling impairments due to chronic paranoid schizophrenia.
7. The Claimant has not alleged any physical disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date, and was 5’3” in height; and weighed 140 pounds. The Claimant is presently [REDACTED] years old.
9. The Claimant has the equivalent of a high school education and an employment history working for [REDACTED] as a food preparer, cashier and drive thru attendant; car rental cleaning and preparation attendant; airport luggage handler and plane de-icer; [REDACTED] Satellite installer, janitor at airport; car parts machine operator (of one month duration).
10. The Claimant’s impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.
11. The Claimant submitted an application for public assistance seeking MA-P benefits on August 18, 2010.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, 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 Manual (“BRM”).

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 413.913. 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 (e.g., 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 to 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 impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 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 are 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, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

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, the Claimant alleges disability due to chronic paranoid schizophrenia and delusions and problems concentrating. The Claimant's treating psychiatrist has diagnosed the Claimant with a long history of psychosis, and schizophrenia, paranoid type.

The Claimant on two occasions has been hospitalized for psychiatric emergency treatment in 2008, and again in September 2010. In September 2010 Claimant was admitted for observation. The Claimant had stopped taking his medications at the time and was noted as having suicidal thoughts, had not eaten for several days and his then-girlfriend petitioned to have him committed for treatment. The Claimant's GAF score was evaluated at 50. A second examination during this hospital stay concluded that further inpatient treatment pursuant to petition for commitment was not needed as the Claimant was stabilized. Exhibit 1 pgs 1 27 – 45.

The most recent examination by the treating physician is dated February 1, 2012 and reports that the Claimant's grooming and hygiene was good, and he was on time for his appointment. The evaluation stated that the Claimant's judgment is fair, insight into his needs is good, that his thought process is congruent with circumstance, memory was intact and speech coherent. The GAF score was 50.

A Mental Residual Functional Capacity Assessment was also performed by the Claimant's treating physician and presented an individual that is markedly limited in 12 of the 20 categories evaluated. Claimant's GAF score is consistently reported as 50.

The Claimant was evaluated as moderately limited in Understanding and Memory. The Claimant was deemed to be markedly limited in Sustained Concentration and Persistence, affecting ability to carry out simple one or two step instructions, ability to carry out detailed instructions and maintain attention and concentration for extended periods. The Claimant was markedly limited in ability to perform within a schedule, sustain ordinary routine without supervision, make simple work-related decisions and complete a normal workday without interruptions from psychologically based symptoms and perform at consistent pace. The Claimant was found markedly limited in 10 of 11 abilities listed.

Claimant's Social Interaction was markedly limited in ability to ask simple questions or request assistance, ability to accept instructions and respond appropriately to criticism, ability to get along with co-workers or peers or exhibiting behavior extremes. As regards Adaptation, Claimant was markedly limited in responding appropriately to change in work situation, and setting realistic goals or making plans independently of others.

In May 2011 his treating physician evaluated the Claimant with a GAF of 45. At this evaluation the Residual Functional Capacity Assessment evaluated the Claimant in all categories as Moderately limited which would indicate that notwithstanding treatment, the Claimant's mental functioning in light of his mental impairment had worsened. Exhibit 1 pgs. 12-16.

In September 2011 a consultative psychiatric exam was conducted and assessed the Claimant as schizophrenic, paranoid type and assessed a GAF of 50. The prognosis was guarded (indicating that he needs to continue treatment). At that examination his affect was blunted, and he described feeling paranoid thinking others were following him and were out to get him. Claimant reported hearing voices. Exhibit 1 pp 4-6.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does

have some physical 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 minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the 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 Claimant has alleged mental disabling impairments of chronic schizophrenia with paranoid features.

Listing 12.00 (mental disorders), specifically 12.03 schizophrenic, Paranoid and Other Psychotic Disorders will be considered in light of the objective medical evidence. Listing 12.03 requires the following be established:

12.03 *Schizophrenic, paranoid and other psychotic disorders:*

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

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 or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect;

OR

4. Emotional withdrawal and/or isolation;

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;

C. (omitted as not applicable)

The Medical evidence presented in this case documents an ongoing chronic condition of schizophrenia with paranoia. Sections A and B of Listing 12.03 that will be considered and analyzed, (referenced above). The medical records presented document persistence of intermittent and persistent delusions or hallucinations experienced by the Claimant. The Claimant has had two episodes of decompensation involving hospitalization beginning in 2008, and again in 2010. The Claimant has been actively involved in treatment for his impairment and sees his psychiatrist, [REDACTED], monthly. He also attends group therapy weekly and is prescribed psychotropic medication for his schizophrenia.

The Claimant credibly testified that he still hears voices and sees things that he is unsure actually exist, although these experiences are lessened with medication. The Claimant has experienced episodes with cars and people following him, and persons by the side of his house. The Claimant's appetite is uneven and he spends much time sleeping due to his medications, which has also resulted in him no longer playing basketball. The Claimant's social contacts are limited to his family members (that he lives with). At times of high anxiety he withdraws from his family members and locks himself in his room. When around strangers he experiences paranoia, believing that "they are out to get him" or imagines that he is doing something wrong. When in this state he has yelled at strangers in order to get them to go away. The Claimant also expressed thoughts of suicide and that he feels like dying when his anxiety is high, as well as becoming instantly angry for no reason.

Claimant's attempts at working have ended in firing or his terminating employment due to his inability to meet the output demands of his employers, difficulty with

communication and getting to and from work as well as contact with the public. Claimant attempted to attend college, but had to drop out as he could not maintain tasks and keep up with class work. He does not grocery shop because of contact with strangers; and needs assistance being reminded by family members about his personal hygiene and appearance, as many days he does not care how he looks or presents.

The above descriptions by the Claimant together with the marked restrictions of the Mental Residual Functional Capacity Assessment set forth in detail above clearly demonstrate marked restrictions of activities of daily living; marked difficulties in maintaining social functioning and difficulties in maintaining concentration, persistence or pace and that his mental impairment meets the requirements of 12.03 (A) and (B).

Ultimately, it is found that the Claimant's impairment(s) do meet the intent and severity requirement of a listed impairment; therefore, the Claimant is found disabled at Step 3 of the analysis.

With regard to the SDA program, a person is considered disabled for the purposes of SDA, if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. As the Claimant meets the federal standards for SSI disability as addressed above, the undersigned concludes that the Claimant is disabled for the purposes of the SDA program as well.

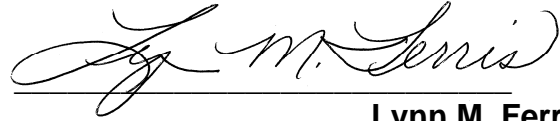
DECISION AND ORDER

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 benefit program and the SDA benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall process the June 30, 2011, application to determine if all other non-medical criteria are met and inform the Claimant of the determination, in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified, in accordance with Department policy.

4. The Department shall review the Claimant's continued eligibility in June 2013 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 31, 2012

Date Mailed: May 31, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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 to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/hw

2012-14444/LMF

cc:

