

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-16159
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: February 13, 2012
County: Wayne (82-18)

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 February 13, 2012, from Detroit, Michigan. Claimant appeared and testified. [REDACTED], a friend of Claimant, appeared as a witness on his behalf. The Department of Human Services (Department) was represented by [REDACTED].

ISSUE

Did the Department properly determine that Claimant is not disabled for purposes of the Medical Assistance (MA-P) 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 considered as a whole, finds as fact:

1. On or about May 12, 2011, Claimant filed an application for MA-P and SDA benefits. The application requested MA-P retroactive to February 1, 2011.
2. On November 17, 2011, the Department denied Claimant's application based on a finding that Claimant did not meet the requisite disability criteria.
3. On December 1, 2011, Claimant filed a hearing request to protest the Department's determination.

4. Claimant, age forty-one, has a tenth-grade education and a high-school Graduate Equivalency Diploma. He is 5'4" and weighs 135 lbs.
5. Claimant last worked in 2007 as a builder installing handrails in new homes. Claimant also performed relevant work cutting and installing wood doors and trim. Claimant's relevant work history consists exclusively of heavy work activities.
6. Claimant has a history of torn rotator cuffs, bipolar disorder, obsessive-compulsive disorder and depression. The date of onset of Claimant's bipolar disorder is determined to be [REDACTED], when he was first diagnosed with bipolar disorder by [REDACTED] psychiatrist at [REDACTED].
7. Claimant was hospitalized and placed in residential care four times in the year previous to his MA application. From [REDACTED], he was hospitalized for alcoholism and was diagnosed with major depressive disorder recurrent without psychotic features. From [REDACTED], Claimant was in residential care for alcoholism at [REDACTED]. From [REDACTED], and [REDACTED], Claimant was hospitalized for suicidal ideation and was diagnosed on [REDACTED], with bipolar disorder. Department Exhibit 1, pp. 18, 31, 81, 83, 98, and 101.
8. Claimant currently suffers physical and mental impairments. Since [REDACTED], Claimant has been under the care of a psychiatrist, [REDACTED], for bipolar disorder. He is also treating with [REDACTED] for torn rotator cuffs.
9. Claimant has severe limitations upon his ability to conduct activities of daily living without episodes of decompensation requiring residential care and hospitalization. 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 record as a whole, 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 the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the 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.

Federal regulations require the Department to use the same definition for “disabled” as the U.S. Social Security Administration uses for Supplemental Security Income (SSI) benefits applications under Title XVI of the U.S. Social Security Act. 42 CFR 435.540(a).

“Disability” is:...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a five-step sequential evaluation process by which current work activity (Step 1), the severity of the impairment(s) (Steps 2 and 3), current physical and mental impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) (Steps 4 and 5) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, no evaluation under a subsequent step is necessary.

Turning now to the required five-step evaluation, Step 1 requires the trier of fact to determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified for MA at Step 1 of the sequential evaluation process.

Step 2 requires that in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means the abilities and aptitudes necessary to do most jobs. Examples of these 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.

20 CFR 416.921(b).

The purpose of Step 2 in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may screen out at this level only those claims which are “totally

groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimis* hurdle” in the disability determination. The *de minimis* standard is a provision of law that allows the court to disregard trifling matters.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that he has significant physical and mental limitations upon his ability to perform basic work activities such as his previous work as a builder. Medical evidence clearly establishes that Claimant has a diagnosis of bipolar disorder which is an impairment (or combination of impairments) that has more than a minimal effect on Claimant’s work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

As Claimant meets the severity requirement of Step 2, the trier of fact must next consider Step 3 of the sequential consideration of a disability claim. In Step 3 of the sequential consideration 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-Listing of Impairments.

This Administrative Law Judge finds that Claimant’s medical history and all of the evidence in this case considered as a whole, support a finding that Claimant’s mental impairments are listed in the Listing of Impairments. Section 12.00 Mental Disorders; see Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant is found disabled based on the medical evidence alone. 20 CFR 416.920(d).

The date of onset of Claimant’s bipolar disorder is determined to be [REDACTED], when he was first diagnosed with bipolar disorder by a psychiatrist at [REDACTED]. Since [REDACTED], Claimant has been under the care of a psychiatrist, [REDACTED], for bipolar disorder. He is also treating with [REDACTED], for torn rotator cuffs.

Claimant’s medical history is consistent with the [REDACTED] diagnosis. Claimant first attempted suicide in [REDACTED] when he was eight years old. He slit his wrists. Claimant was first admitted for psychiatric treatment at the age of sixteen, at the [REDACTED], because of his overly aggressive behavior. Claimant gave credible and unrefuted testimony that he was hospitalized 7-9 times in his life for alcohol-related issues, and three times for mental health issues. He was also incarcerated five times for driving while under the influence of alcohol.

Then in [REDACTED], a psychiatrist at [REDACTED], diagnosed mood disorder, bipolar I disorder, major depressive disorder and minor paranoia. Claimant gave credible and unrefuted testimony that he is still treating with [REDACTED] and sees him once a month. Claimant also receives supportive therapy with a psychotherapist, previously [REDACTED] (last name unknown) and presently with [REDACTED] (last name unknown). He sees his therapist twice a month. Since [REDACTED], Claimant uses five prescription medications: Ativan, Seroquel, Celexa, Depakote, and Trazodone.

Claimant was hospitalized and placed in residential care four times in the year previous to his MA application. From [REDACTED], he was hospitalized for alcoholism, and was diagnosed there as having major depressive disorder recurrent without psychotic features. From [REDACTED], Claimant was in nonmedical residential care for alcoholism at [REDACTED]. From [REDACTED] and also [REDACTED], Claimant was hospitalized for suicidal ideation and was diagnosed with bipolar disorder. Department Exhibit 1, pp. 18, 31, 81, 83, 98, and 101.

Claimant gave credible and un rebutted testimony that he has not heard voices in the past year, his appetite has decreased, and he sleeps only eight hours total in a four-day period.

Claimant testified that he is missing three fingertips on his right hand, and this means that he cannot pick up small objects with his right hand. Claimant's primary hand is his left hand.

Also, Claimant's primary care physician has recommended to the [REDACTED] that Claimant needs an orthopedic evaluation, including arthroscopy, to determine whether surgery is necessary for his left shoulder. The request is pending.

Looking at the Listing of Impairments, it is found and determined that Claimant meets Listing 12.04 Affective Disorders, Section C:

Medically documented history of a 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.... Appendix 1 to Subpart P of Part 404-Listing of Impairments, Section 12.04C.1.

In conclusion, based on the Step 3 requirements of the SSI sequential evaluation process, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA benefits program. The Department's denial of MA benefits to Claimant is 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, he 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, decides and concludes that Claimant meets the definition of medically disabled under the Medical Assistance program.

Accordingly, the Department is ordered to:

1. Initiate a review of the Claimant's MA application, if it has not already done so, to determine if all nonmedical eligibility criteria for MA-P, MA-P retroactive and SDA benefits have been met;
2. Initiate procedures to inform Claimant of its determination in writing, and provide MA-P, MA-P retroactive, and SDA benefits to Claimant at the benefit levels to which he is entitled;
3. Assuming that Claimant is eligible for program benefits, initiate procedures to review Claimant's continued eligibility for program benefits in March 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: February 14, 2012

Date Mailed: February 15, 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:

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- 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:

