

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-2371
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: January 9, 2012
DHS County: Wayne (57)

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 and [REDACTED], testified and appeared as a witness for the Claimant. [REDACTED], ES/ Medical Contact Worker 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 and State Disability Assistance 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 February 7, 2011.
2. On June 23, 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 September 29, 2011.

4. On November 29, 2011, the Department received the Claimant's timely written request for hearing.
5. On November 22, 2011, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2).
6. After the hearing new medical evidence was submitted to the State Hearing Review Team on April 5, 2012. Exhibit 6 (10 pages).
7. On May 10, 2012 after a review of new evidence submitted to the State Hearing Review Team, it issued a decision, and again, found the Claimant not disabled Exhibit 5 (new evidence).
8. The Claimant alleged mental disabling impairments due to chronic paranoid schizophrenia and bi-polar disorder and depression.
9. The Claimant alleged physical disabling impairment(s) due to diabetes, including numbness in his hand and difficulty standing for any length of time, hepatitis C, and hip pain causing him to use a cane.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date, and was 5'6" in height; and weighed 176 pounds. The Claimant is presently [REDACTED] years old.
11. The Claimant has the equivalent of a 10th grade education and an employment history working as a janitor from 2000 to 2003 for [REDACTED], but was let go due to problems with standing and concentration. The Claimant last worked at [REDACTED] in 2009 for 2 months duration, but was laid off. The Claimant's prior work history would be characterized as unskilled light work.
12. 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 ("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 paranoid schizophrenia bipolar disorder, delusions and problems concentrating. A mental status examination documents a diagnosis of schizophrenia and confirms a long history of psychosis, and schizophrenia, paranoid type. The Claimant has no hospitalizations for his mental impairments.

The most recent examination was a consultative mental status examination conducted on January 27, 2012. The examining physician reports that the Claimant's grooming and hygiene was rated adequate, no pressure of speech noted and fairly good contact with reality. The Claimant complained of hearing voices and problems sleeping and feels paranoid and not able to take care of himself independently. The Claimant's affect was blunted and no emotions were shown. The Claimant did not know what the date was and was unable to repeat 3 and 4 digits backward and forward, did not complete any simple math calculations. The diagnosis was schizophrenia, paranoid type, nicotine dependence and history of polysubstance abuse. The GAF score was 45. The evaluating physician indicated that his prognosis was guarded and that the Claimant could not manage his benefit funds. Exhibit 6 page 1-3.

A Mental Residual Functional Capacity Assessment was also performed as part of the consultative examination and presented an individual that is markedly limited in 10 of the 20 categories evaluated. Claimant's GAF score is consistently reported as 40 to 45.

The Claimant was evaluated as markedly limited in Understanding and Memory regarding ability to understand and remember one or two step instructions and understand and remember detailed instructions, 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 4 of 8 abilities listed and was moderately limited in the other activities. Exhibit 6, page 6.

Claimant's Social Interaction was moderately limited in ability to ask simple questions or request assistance, to interact with the general public and responding appropriately to criticism from supervisors. The Claimant was markedly limited in ability to get along with co-workers or peers without disturbing them or exhibiting behavior extremes, and in his ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. As regards Adaptation, Claimant was markedly limited in responding appropriately to change in work situations, and setting realistic goals or making plans independently of others and moderately limited in the remaining two activities. Exhibit 6, page 7.

Another psychiatric evaluation was performed in July 2010 and was evaluated as having a GAF score of 40 and Bipolar, depressed with severe paranoia, and the prognosis was guarded. Exhibit 3, page 53- 56. The risk assessment indicated that he

had a potential for violence and was a danger to others. The examining doctor notes that claimant presented as suspicious, withdrawn and evasive and reported hallucinations and that memory was impaired and cognition was obsessive and preoccupied. Insight and judgment were poor. Exhibit 1 pgs. 12-16.

Claimant's physical impairments include documented Hepatitis C, anemia, diabetes Mellitus and weakness in both legs.

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 and mental disabling impairments and 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 and thus Listing 12.00 (mental disorders) specifically 12.03 schizophrenic, Paranoid and Other Psychotic Disorders,. As regards his diabetes, Listing 9.00 Endocrine System, 1.02 Musculoskeletal, joint dysfunction, and 5.00 Digestive System were also reviewed and it was determined that Claimant's impairments did not meet the requirements of the listings.

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 will be considered and analyzed, (referenced above). The medical records presented document persistence of intermittent and persistent delusions or hallucinations experienced by the Claimant. A friend of the Claimant's who sees him twice a week (and who has known him for 7 years) testified to her ongoing observations that the Claimant isolates himself and hears and sees things quite a bit. She was familiar with Claimant's condition before

the last time he entered drug rehabilitation and indicated that he was not eating, his personal hygiene had dropped and he was using drugs.

The Claimant credibly testified that he still hears voices and sees things that he is unsure actually exist. When asked about the most recent episode of hearing voices, the Claimant testified that a voice told him to jump in front of a bus. The Claimant has experienced these episodes throughout his life. The Claimant's appetite is uneven and at times he has difficulties taking care of himself. 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 (his mother and his mentally ill sister) and removes himself to his room. The Claimant credibly testified that he cries frequently and has anger often. He also has thoughts of suicide, most recently as one month ago. Claimant's past work has mostly involved janitorial work, but the longest he held a job was for 3 years. Claimant's attempts at working have ended in firings, or his terminating employment due to his inability to concentrate. He also credibly testified that he cannot stand more than 10 or 15 minutes. The Claimant does walk with a limp and has been prescribed a cane by his doctor. Exhibit 1 page 30. He does not grocery shop, but he said he could. The Claimant's answers to questions asked of him at the hearing by the undersigned were notably very short, "yes" or "no" answers, his affect was subdued and he was not overly communicative, but was cooperative. When asked how he felt during the hearing he replied, "Bad, depressed".

The above descriptions by the Claimant together with the medical evaluations of his mental impairments, the credible testimony of the witness who knows him well and 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)1,3a and 4 and (B) 2 and 3.

The Claimant recently participated in a 30-day drug rehabilitation program, as he was using heroin. The Claimant was released January 3, 2012. Although Claimant has used drugs in the past, it is found that his drug use is not material to his mental disabling impairments, particularly in light of his lifelong history of schizophrenia.

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

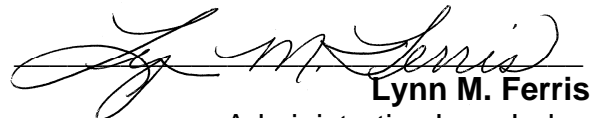
for SSI disability as addressed above, the undersigned concludes that the Claimant is disabled for the purposes of the SDA program as well.

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 February 7, 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 July 2013 in accordance with Department policy.



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

Date Signed: June 8, 2012

Date Mailed: June 8, 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

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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 to:

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

LMF/hw

cc:

