

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-2373
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: January 17, 2012
County: Oakland (63-03)

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 January 17, 2012. Claimant appeared and testified. 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 upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On June 24, 2011, Claimant applied for MA and SDA benefits. The application requested MA-P retroactive to March 1, 2011.
2. On September 14, 2011, the Department denied Claimant's application for benefits based on a finding that he did not meet the requisite disability criteria.
3. On October 6, 2011, Claimant filed a hearing request to protest the Department's determination.
4. On November 22, 2011, the Department's State Hearing Review Team denied Claimant's application.

5. Claimant, age thirty-nine, has an eleventh-grade education and a high-school Graduate Equivalency Diploma (GED). He is 6' tall and weighs 375 lbs.
6. Claimant last worked in 2009, when he was a store clerk for less than a month. His duties were to handle stock, order products, and perform transactions on the cash register.
7. Claimant has a psychiatric and medical history of bipolar disorder, mood disorder (depression) [REDACTED] and degenerative disc disease of the low back [REDACTED]
8. Claimant currently suffers from severe sleep apnea, depression, anxiety, back pain, and arthritis in both knees.
9. Claimant has severe limitations in his ability to concentrate, his mobility, and his ability to bend, reach, lift and carry, and push and pull.
10. Claimant's limitations have lasted twelve months or more.

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.

Federal regulations require the Department to use the same definition for disability 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), and 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 a step in the sequential evaluation, no evaluation under subsequent steps 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 is to screen out claims lacking 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 psychiatric limitations on his ability to perform basic work activities. An MRI in [REDACTED] was positive for degenerative disc disease with mild spinal canal stenosis and moderate neural foraminal encroachment at L4-5 and L5-S1. In 2011, a psychiatrist and a psychologist both diagnosed Claimant with major depressive disorder, and the psychiatrist also diagnosed bipolar disorder. The medical evidence clearly establishes that Claimant has a combination of impairments that have 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, the trier of fact must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404-Listing of Impairments.

This Administrative Law Judge finds that Claimant's medical records support a finding that both of Claimant's impairments are listed in the Listing of Impairments, Section 1.00 Musculoskeletal, and 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).

Claimant's musculoskeletal impairment is degenerative disc disease, including a herniated disc, nerve root displacement and foraminal encroachment. This meets the requirements of Listing 1.04A, Disorders of the Spine. Department Exhibit 1, p. 44.

Also, [REDACTED] a psychiatrist at [REDACTED] diagnosed Claimant with mood disorder, bipolar I disorder and major depressive disorder. Claimant gave credible and un rebutted testimony that he is seeing [REDACTED] for extreme depression. Since [REDACTED], he has taken several anti-depressant prescription medications but none of them have been effective.

Consistent with the psychiatric diagnosis, [REDACTED], also diagnosed major depressive disorder. *Id.*, pp. 28, 38.

Claimant also suffers from atrial fibrillation. He breathes heavily, feels overexertion performing simple tasks such as doing laundry or climbing steps, and was hospitalized in [REDACTED] for similar symptoms. He treats with a cardiologist, [REDACTED], who in [REDACTED] advised him that work is "not recommended ... not even low stress work...."

Looking next at the Listing of Impairments, it is found and determined that Claimant meets Listing 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."

Claimant presents at least four of the characteristics of depression, including loss of interest in activities, appetite disturbance with change in weight, sleep disturbance, and feelings of guilt or worthlessness. Listing 12.04A1 a, b, c and f. He also presents two resulting behaviors as a result of these impairments: marked restriction of activities of daily living and marked difficulties in maintaining concentration, persistence and pace. Listing 12.04B1 and 3.

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 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 and SDA programs as of June 24, 2011, his application date.

Accordingly, the Department is ordered to:

1. Initiate a review of the Claimant's June 24, 2011, application, if it has not already done so, to determine if all nonmedical eligibility criteria for MA, MA-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 no earlier than February, 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: January 30, 2012

Date Mailed: January 30, 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:

