

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-24109
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 12, 2012
County: Macomb (50-20)

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 March 12, 2012, from Detroit, Michigan. Claimant appeared and testified. Claimant was represented by [REDACTED]. 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 as a whole, finds as fact:

1. On November 28, 2011, Claimant filed an application for MA and SDA benefits. The application requested MA-P retroactive to August 1, 2011.
2. On December 1, 2011, the Department denied Claimant's application for benefits based on a finding that Claimant did not meet the requisite disability criteria.
3. On December 28, 2011, Claimant filed a hearing request to protest the Department's determination.

4. Claimant, age forty-seven [REDACTED] has an eleventh-grade education. He was a special education student.
5. Claimant last worked in 2006 as a certified nurse's assistant. Claimant's relevant work history consists exclusively of unskilled heavy work activities.
6. Claimant has a history of bipolar disorder, depression, radiculopathy and lumbar spine pain.
7. Claimant was hospitalized for two days in [REDACTED] for a suicide attempt. He visited the emergency room in [REDACTED] for severe lumbar spine pain.
8. Claimant currently suffers from bipolar disorder, depression, radiculopathy and lumbar spine pain.
9. Claimant has severe limitations on his physical (stand, sit, walk, lift and carry, pull and push, raise over the head) and mental abilities (interaction with co-workers and others). Claimant's psychiatric limitations began in [REDACTED] and his physical limitations began in about [REDACTED]. 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 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.

1. Is Claimant engaged in substantial gainful activity? **NO.**

If the answer to Question 1 is YES, Claimant is *not* disabled and may *not* receive MA benefits.

If the answer is NO, go to Question 2.

2. **Do Claimant's impairments meet the severity and one-year durational requirements? YES.**

If the answer to Question 2 is NO, Claimant is *not* disabled and may *not* receive MA benefits.

If the answer to Question 2 is YES, go to Question 3.

3. **Does Claimant's impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent? YES.**

If the answer to Question 3 is NO, go to Question 4.

If the answer to Question 3 is YES, state the Impairment Listing No(s):

1.04A, Disorders of the spine (herniated nucleus pulposis) with ... [e]vidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine) resulting in compromise of a nerve root, etc., and

12.04C, Affective disorders with medically documented history of a chronic affective disorder of at least 2 years duration that has caused more than a minimal limitation ... and (1) repeated episodes of decompensation, each of extended duration.

It is found and determined that Claimant **IS DISABLED** at Step 3 and has established MA disability.

Stop here, and do not answer Questions 4 and 5.

4. **Is Claimant capable of performing previous relevant work? NOT APPLICABLE.**

5. **Is Claimant capable of performing other available work? NOT APPLICABLE.**

With regard to his spinal impairment, Claimant's lower back pain and radiculopathy were first diagnosed in [REDACTED] when Claimant sought treatment from [REDACTED] his family physician. An MRI done on [REDACTED] showed "Very mild central disc

bulging at L4-5 and L5-S1 with no discrete herniation or canal stenosis. The disc bulging is greater paracentrally to the right at L5/S1.” Based on the MRI, [REDACTED], diagnosed lumbar spondylosis and lumbar radiculopathy and gave Claimant a caudal epidural steroid injection.

In [REDACTED], four months later, [REDACTED] performed an EMG which showed “right-sided late subacute early chronic L5 radiculopathy with denervation changes seen in the right low lumbar paraspinal muscles and the tibialis anterior and gastrocnemius, ... right-sided peroneal nerve mononeuropathy at the ankle, ... bilateral tibial nerve mononeuropathy that indicates an early case of peripheral neuropathy.” He continued Claimant’s pain medication and arranged for another epidural steroid injection.

Then in [REDACTED], Claimant visited [REDACTED] for severe lower back pain.

In addition, Claimant gave credible and un rebutted testimony consistent with the diagnoses above. He can sit for only 30-40 minutes, stand for 1-2 hours, walk only ½-1 mile, and lift, carry and raise over his head only 35 lbs. His ability to bend is now only 50%.

Based on the medical evidence detailed herein, the undersigned finds and determines that the medical evidence supports a finding that Claimant has a spinal disorder equal to or equivalent to Listing of Impairment 1.04A Disorders of the Spine. Department Exhibit 1, pp. 4, 16, 21, 25, 31, 34 and 52. Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

With regard to Claimant’s psychiatric impairment, Claimant was hospitalized in [REDACTED], for two days with a diagnosis of bipolar disorder. The hospitalization occurred after a suicide attempt, one of three in Claimant’s history. Claimant was placed in a hospital psychiatric unit. He was previously hospitalized for psychiatric treatment in [REDACTED] for two weeks.

In [REDACTED], Claimant was diagnosed with bipolar disorder (he also presented with a history of back pain with leg numbness) by a treating social worker. The issues noted in his medical records were problems relating to the social environment, and cocaine dependence with episodic use. His Global Assessment Function level was 45.

In [REDACTED] Claimant was diagnosed again with bipolar disorder by a social worker. Claimant reported depression, headaches, low energy, anhedonia, poor sleep, loss of weight and loss of appetite. He also reported delusions, hallucinations, paranoid ideation, and aggressive behaviors. Department Exhibit 1, pp. 8, 58-59, 62-65, 68-70, 72 and 74. Currently he is in outpatient treatment for bipolar disorder. He gave credible and un rebutted testimony that his limitations in interactions with people are of medium severity.

In [REDACTED], before he was diagnosed with bipolar disorder, Claimant attended several residential treatment programs for substance abuse: [REDACTED].

Based on all of the above-referenced medical records in evidence in this case, the undersigned finds that Claimant meets the requirements of Listing of Impairment 12.04C, Chronic Affective Disorder, or its equivalent, i.e., he has an affective disorder, specifically bipolar disorder, of the required duration and severity. *Id.*

In conclusion, having reviewed all of the evidence in this case as a whole, this Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA and SDA programs. 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.

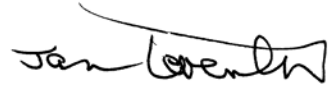
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that Claimant **IS DISABLED** and meets the definition of medically disabled under the MA and SDA programs as of July 5, 2008.

The Department is **REVERSED**, and is ordered to:

1. Initiate a review of Claimant's November 28, 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 and his Authorized Hearing Representative 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 April 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: March 13, 2012

Date Mailed: March 13, 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.

2012-24107/JL

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:

