

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201257649
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: September 4, 2012
County: Oakland DHS (04)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on September 4, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 2/13/12, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 4/20/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1 and 4).
4. On 4/24/12, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/7/12, Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On 7/21/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 59), in part, by finding that Claimant retained the capacity to perform past relevant work.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'11 " and weight of 160 pounds.
8. Claimant has no relevant recent history of alcohol, tobacco or other substance abuse.
9. Claimant's highest education year completed was the 10th grade but he subsequently obtained a general equivalency degree.
10. As of the date of the administrative hearing, Claimant had no ongoing health coverage and last had medical coverage in approximately 2006.
11. Claimant alleged that he is disabled based on impairments and issues including: restlessness, foot pain and low energy.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program 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 Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining

whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

A Social Summary (Exhibits 5-6) dated [REDACTED] was presented. The form was unsigned. It was noted that Claimant had impairments of paranoid schizophrenia.

A Medical Social Questionnaire (Exhibits 7-8) was presented. Claimant completed the form on [REDACTED]. Claimant noted he had blurred vision, restlessness and felt paranoid and weird. Claimant noted that his body cannot function like it used to.

A Psychiatric Evaluation Report (Exhibits 10-12) was presented. The form was signed on [REDACTED] by Claimant's physician. A diagnosis of paranoid schizophrenia was provided, but it was noted that Claimant currently had no symptoms of psychosis. It was noted that Claimant took Zyprexa and that if he did not take the medication, he may end up in the hospital. It was noted that Claimant's last hospitalization was 12 years prior. It was noted that Claimant denied hallucinations, suicidal ideation and feeling depressed. The physician scored Claimant's GAF as 50. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

Documents related to a second evaluation (Exhibits 32-36) were presented. The form was signed on 1 [REDACTED] by Claimant's physician. It was noted that Claimant displayed: average grooming, a cooperative attitude, dysphoric mood, normal psychomotor activity, normal speech, goal directed thought process, normal thought content, flat affect, adequate concentration, adequate impulse control and adequate judgment. A diagnosis for paranoid schizophrenia was provided. Claimant's GAF was 50.

A Mental Residual Functional Capacity Assessment dated [REDACTED] was completed by Claimant's case manager at his treating mental health agency. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the twenty abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation"; it should be emphasized that the person completing the form was neither Claimant's therapist or physician. Claimant was deemed to be markedly limited in 7 abilities including five of the eight concentration related abilities and two understanding/memory abilities. It was noted that Claimant was markedly limited in the ability to perform a full workday without interruption from psychological symptoms.

Claimant completed an Activities of Daily Living (Exhibits 15-16 and 2) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted he had trouble sleeping because he was restless and scared. Claimant noted he sometimes needed help with daily

activities but did not specify how. Claimant testified that he was able to dress and bathe himself. He stated that his father takes him shopping. Claimant stated he does not drive because his license is suspended.

Claimant testified that he had physical restrictions which impact his employment potential. Claimant stated that he had foot calluses and joint pain in his feet. The record was devoid of any medical evidence supporting a finding of exertional restrictions to Claimant's employment potential. Based on the lack of medical evidence to support Claimant's testimony, it is found that Claimant failed to establish an exertional impairment to the performance of basic work activities.

Claimant also alleged non-exertional restrictions to performing basic work activities. Claimant stated that he was restless and had little energy. It was established that Claimant was diagnosed with paranoid schizophrenia. It was also established that Claimant receives ongoing medication for the disorder. Claimant's treating physician failed to note any significant obstacles for Claimant, as long as he takes his medication. The worst that can be noted is that Claimant is depressed, as evidenced by a flat affect and dysphoric mood. A GAF of 50 is representative of serious psychological symptoms, but those symptoms do not appear to be evident as long as Claimant takes ongoing medication.

The marked restrictions noted on the MRFCA could be persuasive evidence of a significant impairment to performing basic work activities. Prior to accepting the form as persuasive evidence, the qualifications of the document's author must be considered.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*. As noted above, the MRFCA was completed by Claimant's case manager at the agency treating Claimant's psychological condition. Claimant sees a therapist there twice per month and a physician. Additionally, Claimant was assigned a case manager. Claimant described his case manager as the person who assists with completing documents. Such a person is not a "medical source" as defined by SSA (see SSR 06-03p). The form could be given some consideration, even if from a non-medical source, if from a person with notable insight of Claimant's condition (e.g. therapist). There is no reason to believe that Claimant's case manager is such a person. It is found that the MRFCA is not a persuasive source for information about Claimant's work capabilities as the author is not a reliable source of information into Claimant's psychology.

Though it is probable that Claimant would be disabled if he did not have access to medication, Claimant has a recent history of taking his medication. Claimant noted that he has no guarantee of receiving his medication in the future. Claimant's statement may be true, but there is similarly no evidence that Claimant will lose access to his medication. A decision of disability can only consider what has happened and what will likely happen. If there comes a time when Claimant loses access to medication, Claimant is strongly encouraged to reapply for disability. However, based on the present

circumstances, there is no evidence that Claimant will be disabled in the future due to a lack of access to medication.

There is insufficient evidence that Claimant is or will be significantly impaired in performing basic work activities, even applying a de minimus standard. It is found that Claimant is not a disabled individual. Accordingly, the DHS application denial for MA benefits is found to be proper.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.


A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It has already been found that Claimant is not disabled for purposes of MA benefits because Claimant failed to establish a significant impairment to performing basic work activities. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA and SDA benefit application dated 2/13/12 based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 13, 2012

Date Mailed: September 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.

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

CG/hw

cc:

