

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

**IN THE MATTER OF:**



Reg. No.: 201272970  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: December 5, 2012  
County: Wayne DHS (49)

**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, an in-person hearing was held on December 5, 2012 from Detroit, Michigan. Participants included the above named claimant. [REDACTED] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

**ISSUE**

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) 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 4/3/12, Claimant applied for MA benefits (See Exhibits 15-16) including retroactive MA benefits back to 2/2012 (see Exhibits 13-14).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/17/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 23-24).
4. On 5/31/12, DHS denied Claimant's application for MA benefits and mailed an Application Eligibility Notice (Exhibit 19) informing Claimant of the denial.

5. On 8/17/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 3).
6. On 10/11/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 94), in part, by application of Medical-Vocational Rule 204.00.
7. On 12/5/12, an administrative hearing was held.
8. At the hearing, Claimant presented new medical documents (Exhibits A1-A12), which were forwarded to SHRT along with previously presented documents.
9. On 2/2/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits A13-A14), in part, by determining that Claimant does not have a severe impairment.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'9" and weight of 200 pounds.
11. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
12. Claimant's highest education year completed was 12<sup>th</sup> grade via obtainment of a general equivalency degree.
13. As of the date of the administrative hearing, Claimant had no ongoing medical insurance coverage, but receives many prescriptions through unspecified means.
14. Claimant alleged that he is disabled based on impairments and issues including: depression, schizophrenia, anxiety and loss of a finger tip.

### **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 income limit is \$1010/month.

In the present case, Claimant worked two jobs since applying for MA benefits. Claimant stated that he loaded logs onto a splitter in 10/2012 and that he moved furniture in 5/2012. Claimant testified that both jobs were temporary and neither resulted in income above the SGA threshold; no evidence was submitted to contradict Claimant's testimony. Without SGA income, 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 that medical documentation.

A Michigan Department of Corrections document (Exhibit 68) dated [REDACTED] was presented. An Axis I diagnosis of undifferentiated somatoform disorder was presented. It was noted that Claimant presented after medical treatment for superficial cuts on his arms. It was noted that Claimant was scheduled to be released from incarceration in six days. It was noted that Claimant was performing a final ploy to be deemed mentally ill. It was noted that Claimant was not considered to be mentally ill.

Hospital records (A3-A11) were presented. The documents noted a hospital admission dated [REDACTED]. It was noted that Claimant presented with complaints of hearing voices and violent thoughts. It was noted that Claimant took seven unknown pills and called police. It was noted that Claimant was discharged the following day. It was noted that Claimant had good judgment at discharge. It was recommended that Claimant continue mental health treatment through an outpatient program. Claimant was given prescriptions for: Albuterol, Lidex, Claritin and Benadryl.

A Medical Examination Report (Exhibits A1-A2) dated [REDACTED] was completed by a physician. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of depression and schizophrenia. An impression was given that Claimant's condition was stable. It was noted that Claimant can not meet household needs though no clarification was provided.

Hospital records (Exhibits 33-64) dated [REDACTED] were presented. It was noted that Claimant presented with a complaint of chest pain which was quickly resolved. It was also noted that Claimant sought services for his homelessness. It was noted that Claimant was released from prison on [REDACTED] after a 24 month incarceration. It was noted that Claimant had multiple suicide attempts in his past including slitting his wrists at age 18 and attempting to overdose on pills during incarceration. A suicide attempt on [REDACTED] was noted. Claimant was psychologically examined. The examining physician provided an Axis I diagnosis of depressive disorder. Claimant's GAF was 50.

An Adult Services Comprehensive Assessment (Exhibits 69-77) dated [REDACTED] was presented. The assessment was from an agency treating Claimant. It was noted that Claimant displayed a controlled and constricted affect. It was noted that Claimant reported auditory hallucinations, depression and anxiety. An Axis I diagnosis of major depressive disorder was provided; a secondary disorder was provided of psychotic disorder. Claimant's GAF was 50.

Medication review documents (Exhibits 79-83) dated [REDACTED] from Claimant's treating psychiatric agency were provided. It was noted that Claimant presented with a depressed mood, constricted affect, paranoid thought content and fair concentration. Claimant's GAF was 48.

Medication review documents (Exhibits 84-88) dated [REDACTED] from Claimant's treating psychiatric agency were provided. Claimant's GAF remained at 48.

A Discharge Summary (Exhibit 89-90) from Claimant's psychological treaters dated [REDACTED] was presented. Claimant's GAF again was 48. It was noted that Claimant was noncompliant with treatment following numerous no-call/no shows, cancellations and tardiness.

A hospital document (Exhibit A12) dated [REDACTED] was presented. It was noted that Claimant was diagnosed with anxiety problems.

The medical records established ongoing Claimant suffered from depression with symptoms of schizophrenia. Claimant's psychological treatment records noted obstacles for Claimant in the areas of concentration and social functioning; concentration and social functioning are fundamental basic work activities. It was also established that Claimant's GAF remained between 41-50 during the period of his psychological treatment. 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)." It is found that Claimant established significant impairments to performing basic work activities.

Claimant's medical history noted that Claimant was noncompliant with psychological treatment. SSA disability applicants who do not follow prescribed treatment without good reason will not be found disabled. 20 CFR 404.1530 (b). Physical, mental, educational and linguistic limitations may be factored into the determination. 20 CFR 404.1530 (c).

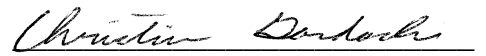
Claimant testified that he suffered psychological impairments and pleaded for help. Claimant's testimony was compelling. Claimant's medical records were more compelling. The medical records referencing Claimant's noncompliance were not submitted until after the hearing. It was noted that over 13 appointments from [REDACTED] Claimant cancelled or was a no-show for 10 appointments. It was noted that psychological treatment was not effective due to Claimant's noncompliance. Claimant

testified that he forgot his appointments. Theoretically, Claimant's impairments could have contributed to his noncompliance. Of the few medical records that were presented, there is little evidence to excuse Claimant from his missed appointments. Throughout psychological treatment, Claimant was found with good judgment and logical thought process. Claimant's repeated failure to attend therapy and medical review appointments is found to be noncompliance with prescribed treatment.

Rather than summarily concluding that Claimant is not disabled, a limited finding discounting Claimant's treatment records following [REDACTED] will be adopted. This leaves Claimant with evidence of a hospital admission from 2/2012 resulting in a one day hospital stay, medical opinion from the Department of Corrections that Claimant is trying to be found disabled and evidence of a hospital encounter in 11/2012 regarding anxiety. The presented evidence is insufficient to establish that Claimant suffers from a severe impairment. All that can be determined is that Claimant was depressed in the three week period following his release from prison and that he may have some ongoing anxiety problems. It is found that Claimant does not have a severe impairment and is not disabled. Accordingly, the MA benefit denial by DHS is found to be proper.

### **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 benefit application dated 4/3/12 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: 2/22/2013

Date Mailed: 2/22/2013

**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:

