

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012 60908
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 24, 2012
Wayne County DHS (18)

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, an in person hearing was held in Taylor, Michigan on October 24, 2012. The Claimant appeared and testified. A witness, [REDACTED] also appeared and testified. [REDACTED] Medical Contact Worker, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly terminated the Claimant's ongoing eligibility for of the Medical Assistance ("MA-P") on the basis that the 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. The Claimant was an ongoing recipient of MA-P benefits.
2. The Claimant's basis for MA-P benefits was as a disabled individual.
3. On 5/9/12 The Medical Review Team (MRT) determined that Claimant was not a disabled individual.
4. The Department notified the Claimant of the MRT determination by Notice of Case Action on May 20, 2012, and terminated the benefits effective 5/14/12.

5. On May 22, 2012, the Department received the Claimant's timely written request for hearing.
6. On August 2, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. Exhibit 3
7. An Interim Order was issued on October 12, 2012, which ordered the Department to obtain additional new medical evidence to be submitted to the State Hearing Review Team. The new medical evidence was submitted to the SHRT on March 12, 2013.
8. On May 24, 2013, the State Hearing Review Team found the Claimant not disabled.
9. The Claimant alleged mental disabling impairment(s) due to bipolar disorder and severe depression.
10. The Claimant alleged physical disabling impairments, cervical pain and radiculopathy due to cervical fusion and degenerative disc disease, with severe pain in the neck.
11. At the time of the administrative hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. The Claimant was 5'9" in height; and weighed 150 pounds.
12. The Claimant has a 10th grade education. The Claimant attended special education classes for both reading and math and has poor reading skills. The Claimant has a work history working at a car wash, working in a warehouse making boxes, and general yard maintenance. The Claimant last worked in 2008.
13. As of the date of the administrative hearing, Claimant had no medical insurance coverage since the termination of MA-P benefit eligibility as of May 14, 2012.
14. 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 program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, 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 Tables (“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).

The analysis of Claimant's MA benefit eligibility differs based on whether Claimant was an applicant or an ongoing recipient. It was not disputed that Claimant received Medicaid until May 14, 2012, prior to DHS terminating Claimant's eligibility. It was clear from the record presented that Claimant was an ongoing Medicaid recipient based on disability.

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing MA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20

CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required.

Claimant alleged impairments related to bipolar disorder and severe depression and cervical radiculopathy, due to a cervical fusion and degenerative disc disease. Based on Claimant's testimony, Claimant's most significant problem seemed to involve his bipolar disorder, which he has had for all of his life.

Listing 12.04 covers disability for bipolar disorder and provides the following:

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for this disorder is met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or
 - 2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractability; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions, or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

AND

- B. Resulting in at least two of the following:
 1. Marked restriction on 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;

The Medical evidence presented at the hearing regarding the Claimant's bipolar disorder and depression is summarized below.

The Claimant's treating psychiatrist completed a medical questionnaire on June 28, 2012. The doctor has seen the Claimant since 12/03/10. The Diagnosis was "bipolar disorder, depressed, patient has mood swings and hears voices sometimes". The evaluation noted that, "due to mood swings it is hard for the patient to hold a job". The functional limitations noted were that Claimant could not handle stress well. The side effects due to medications were listed as dizziness, vomiting, nausea, diarrhea, hypertension, sweating fever, muscular rigidity. Claimant's prognosis was guarded.

The doctor's opinion was that the Claimant could not perform a full time job due to his unstable mood swings. A medical assessment to perform work related activities was also completed by Claimant's treating psychiatrist. The Claimant was markedly limited in his ability to understand detailed instructions and to carry out detailed instructions, in his ability to maintain attention and concentration for extended periods. The Claimant was markedly limited to work in coordination with, or proximity to, others without being distracted by them. The Claimant was markedly limited in his ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The Claimant was also markedly limited in his ability to accept instructions and respond appropriately to criticism from supervisors. The Claimant was moderately limited in the remaining categories; was not limited significantly in his ability to take appropriate precautions. The GAF score was 50.

An updated Mental residual Functional Capacity Assessment was completed on 1/9/13 which was similar to the June 28, 2012 evaluation however it added marked limitations in Claimant's ability to get along with co workers or peer without distracting them or

exhibiting behavioral extremes, ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, the ability to travel in unfamiliar places or use public transportation and finally ability to set realistic goals or make plans independently of others. On this evaluation the Claimant was markedly limited in 12 of the 20 categories.

A psychiatric Examination Report was also completed on 1/9/13 by the Claimant's treating psychiatrist. The Report found that the Claimant came to the exam and was very disorganized, had poor hygiene, unkempt and clothes were not clean. The report noted that Claimant has poor reading skills and is borderline intellectually.

The Claimant has treated at Community Care Services for several years. The medical record indicates that the Claimant was seen on the following dates, and is undergoing consistent treatment: 8/9/12, "patient has mild mood swings last drank alcohol about a month ago and reports trouble sleep". GAF was 50. The diagnostic summary was "long history of mood swings and alcohol use, presents mild mood swings, intermittent insomnia and hearing voices once in a while. Patient has a history of hypomanic and major depressive episodes with suicide attempts and drinks 4-5 cans 1-2 times month". Diagnosis was bipolar II disorder, depressed. The Claimant was seen on June 14, 2012, for medication review, "reported trouble sleeping and getting ups and downs sometimes. Last drank beer 10 days ago and was groomed with care", and GAF was 50. On April 4, 2012, the Claimant was evaluated and was found "doing about the same but better, not as many mood swings with a little trouble sleeping but not bad. Cutting down on drinking. The Claimant was pleasant and untidy". GAF score was 50. The Claimant was seen again on 2/10/12. The Claimant reported "problems with depression which is stabilized with medication, reports continuing to hear voices but no command". GAF was 50.

On January 31, 2012, the Claimant was referred to treatment where he currently is "treated after being hospitalized due to major depression, suicidal thoughts and wanted to walk in traffic". At time of the hospitalization he was walking in traffic and reported that his medications were not working. At the time of the referral, the Claimant reported past alcohol abuse and 3 DUI's ending in 1994, and was evaluated as drinking causing problems in his life. The GAF score was 50 and the diagnosis was bipolar disorder depressed with alcohol dependence and was referred for 9-12 months of outpatient treatment.

In this case, the record reveals ongoing treatment for bipolar disorder with severe depression. Medical records document pervasive episodes, extreme depression and marked restrictions of social functioning and difficulties maintaining concentration, persistence or pace as well as adaption. The Claimant has been treating consistently with breaks only due to lack of insurance coverage, and sees his Psychiatrist monthly

for evaluation and medication review and participates in therapy. His GAF scores are consistently 50. This GAF score translates to serious symptoms OR any serious impairment in social, occupational or school functioning. Based upon the Residual Functional Capacity Assessment, the Claimant has not medically improved. Based upon the medical evidence alcohol is not material. The records and evaluations of the Claimant's treating psychiatrist indicate that the Claimant will need continuing treatment, and is, as of January 2013 markedly limited in maintaining social functioning and concentration, persistence and pace as set forth above.

As a result, the medical records and evaluations demonstrate clearly that the Claimant has marked restrictions in social functioning, and concentration, persistence and pace, and has a GAF score which is low. Deference was also accorded to the medical opinion of the Claimant's treating psychiatrist. The evaluations of the treating physician and the medical conclusion of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record under 20 CFR§ 404.1527(d)(2),

Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent of, a listed impairment within 12.00, specifically 12.04 A , 3 B. 2, and 3. Bipolar Syndrome. Accordingly, the Claimant is found disabled at Step 1 with no further analysis required.

In this case, the Claimant is found disabled for purposes of the MA-P program.

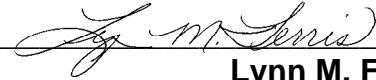
DECISION AND ORDER

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.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate reinstatement of the Claimant's MA-P case retroactive to the date of closure and process the case ongoing.
3. The Department shall review the Claimant's continued eligibility in June

2014 in accordance with department policy.



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

Date Signed: 6/21/2013

Date Mailed: 6/21/2013

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

LMF/hw

2012-60908/LMF

cc:

