

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

IN THE MATTER OF:



Reg. No.: 2013-1629
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 30, 2013

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a hearing was conducted in Detroit, Michigan on January 30, 2013. Claimant appeared and testified. Claimant's Authorized Hearing Representative [REDACTED] of the Department of Human Services (Department).

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program.

FINDINGS OF FACT

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

1. Claimant submitted an application for public assistance seeking MA-P and Retroactive MA-P benefits on May 29, 2012.
2. On August 9, 2012, the Medical Review Team (MRT) determined that Claimant was not disabled.
3. The Department notified Claimant of the MRT determination on September 4, 2012.
4. On September 24, 2012, the Department received Claimant's timely written request for hearing.

5. On November 26, 2012, the State Hearing Review Team found Claimant not disabled.
6. At the time of the hearing, Claimant was 36 years old with a birth date of [REDACTED]
7. Claimant earned his GED.
8. Claimant is not currently working.
9. Claimant has a work history as a waiter.
10. Claimant suffers from Diabetes Mellitus Type I and had mild diabetic Ketoacidosis on May 23, 2012 (Exhibit 1, pp. 13-18), and had diabetic ketoacidosis, acute kidney injury and hypertension on May 26, 2012 (Exhibit 1, pp. 24-26, p. 45, 70) Claimant suffered from a stroke in 2008 (Exhibit 1, p. 24) Claimant also suffers from major depressive disorder, recurrent with psychotic features, untreated. (Exhibit 2, p.3) In addition, Claimant suffers from chronic pain in the left foot and history of chronic lower back pain. (Exhibit 3, p. 1)
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
12. 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, do not 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

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").

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the 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 sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that he is not currently working and the Department presented no contradictory evidence. Therefore, Claimant is not disqualified for MA at this step in the sequential evaluation process.

Second, 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 expected to last twelve months or more (or result in death) which significantly limits an individual’s physical or mental ability to perform basic work activities. The term “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 the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, medical evidence has clearly established that Claimant suffers from Diabetes Mellitus Type I and had mild diabetic Ketoacidosis on May 23, 2012 (Exhibit 1, pp. 13-18), and had diabetic ketoacidosis, acute kidney injury and hypertension on May 26, 2012 (Exhibit 1, pp. 24-26, p. 45, 70) Claimant suffered from a stroke in 2008 (Exhibit 1, p. 24) Claimant also suffers from major depressive disorder, recurrent with psychotic features, untreated. (Exhibit 2, p.3) In addition, Claimant suffers from chronic pain in the left foot and history of chronic lower back pain. (Exhibit 3, p. 1)

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant’s medical record will support a finding that Claimant’s impairment(s) is a “listed impairment” or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

In the present case, Claimant alleged disability due to high blood pressure, diabetes, seizures and stroke. (Exhibit 1, p. 7) It is noted that the State Hearing Review Team submitted a psychological examination report, which will be considered in light of Listing 9.00, which refers to a consideration of mood disorders found in Listing 12.00, and states in part:

Section 9.00 Endocrine Disorders

.....

An endocrine disorder is a medical condition that causes a hormonal imbalance. When an endocrine gland functions abnormally, producing either too much of a specific hormone (hyperfunction) or too little (hypofunction), the hormonal imbalance can cause various complications in the body. The major glands of the endocrine system are the pituitary, thyroid, parathyroid, adrenal, and pancreas.

B. How do we evaluate the effects of endocrine disorders?
We evaluate impairments that result from endocrine disorders under the listings for other body systems. For example:

...

Diabetes mellitus and other pancreatic gland disorders disrupt the production of several hormones, including insulin, that regulate metabolism and digestion. Insulin is essential to the absorption of glucose from the bloodstream into body cells for conversion into cellular energy. The most common pancreatic gland disorder is diabetes mellitus (DM). There are two major types of DM: type 1 and type 2. Both type 1 and type 2 DM are chronic disorders that can have serious disabling complications that meet the duration requirement. Type 1 DM--previously known as "juvenile diabetes" or "insulin-dependent diabetes mellitus" (IDDM)--is an absolute deficiency of insulin production that commonly begins in childhood and continues throughout adulthood. Treatment of type 1 DM always requires lifelong daily insulin. With type 2 DM--previously known as "adult-onset diabetes mellitus" or "non-insulin-dependent diabetes mellitus" (NIDDM)--the body's cells resist the effects of insulin, impairing glucose absorption and metabolism. Treatment of type 2 DM generally requires lifestyle changes, such as increased exercise and dietary modification, and sometimes insulin in addition to other medications. While both type 1 and type 2 DM are usually controlled, some persons do not achieve good control for a variety of reasons including, but not limited to, hypoglycemia unawareness, other disorders that can affect blood glucose levels, inability to manage DM due to a mental disorder, or inadequate treatment.

a. Hyperglycemia. Both types of DM cause hyperglycemia, which is an abnormally high level of blood glucose that may produce acute and long-term complications. Acute complications of hyperglycemia include diabetic ketoacidosis. Long-term complications of chronic hyperglycemia include many conditions affecting various body systems.

(i) Diabetic ketoacidosis (DKA). DKA is an acute, potentially life-threatening complication of DM in which the chemical balance of the body becomes dangerously hyperglycemic and acidic. It results from a severe insulin deficiency, which can occur due to missed or inadequate daily insulin therapy or in association with an acute illness. It usually requires hospital treatment to correct the acute complications of dehydration, electrolyte imbalance, and insulin deficiency. You may have serious complications resulting from your treatment, which we evaluate under the affected body system. For example, we evaluate cardiac arrhythmias under 4.00, intestinal necrosis under 5.00, and cerebral edema and seizures under 11.00. Recurrent episodes of DKA may result from mood or eating disorders, which we evaluate under 12.00.

(ii) Chronic hyperglycemia. Chronic hyperglycemia, which is longstanding abnormally high levels of blood glucose, leads to long-term diabetic complications by disrupting nerve and blood vessel functioning. This disruption can have many different effects in other body systems. For example, we evaluate diabetic peripheral neurovascular disease that leads to gangrene and subsequent amputation of an extremity under 1.00; diabetic retinopathy under 2.00; coronary artery disease and peripheral vascular disease under 4.00; diabetic gastroparesis that results in abnormal gastrointestinal motility under 5.00; diabetic nephropathy under 6.00; poorly healing bacterial and fungal skin infections under 8.00; diabetic peripheral and sensory neuropathies under 11.00; and cognitive impairments, depression, and anxiety under 12.00.

When evaluating mental impairments, a special technique is used. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of

functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2).

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. (12.00A.) The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. (12.00B.) The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). (12.00D.)

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 these disorders 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 distractibility; 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;

OR

- C. Medically documented history of chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
- 1. Repeated episodes of decompensation, each of extended duration; or
 - 2. A residual disease process that has resulted in such marginal adjustment that even minimal increase in mental demands or

change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In the present case, the independent psychological examination report of September 5, 2012 shows a diagnosis of "Major depressive disorder, recurrent with psychotic features, untreated." The report indicates pervasive loss of interest in almost all activities ("no motivation"), decreased energy ("tired and fatigued"), hallucinations, delusions or paranoid thinking ("hearing noises . . . seeing shadows . . . feels his . . . family members are going to kill him. He does not go out and does not trust others."), sleep disturbance (he wakes at night with bad dreams) and has had thoughts of suicide. The report indicates marked restriction on activities of daily living and marked difficulties in maintaining social functioning. (" . . . the claimant has major depressive disorder, recurrent, with psychotic features which has been untreated and interferes with his ability to interact with the public, coworkers and family members.") (Exhibit 2, pp. 1-3)

In light of the foregoing, it is found that Claimant's impairment meets, or is the medical equivalent thereof, of combined listed impairments 9.00 and 12.00, specifically 12.04 A and B. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

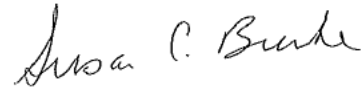
DECISION AND ORDER

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 programs as of May 1, 2012.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the May 29, 2012 application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.

3. The Department shall review Claimant's continued eligibility in March of 2014, in accordance with Department policy.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: February 5, 2013

Date Mailed: February 5, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing 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

SCB/tm

cc:

