

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-845
Issue Nos.: 2009, 4031
Case No.: ██████████
Hearing Date: March 13, 2013
County: Wayne (17)

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 hearing was held on March 13, 2013, at Detroit, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of Claimant were Authorized Representative ██████████ ██████████, Detroit. Participants on behalf of the Department of Human Services (Department) were ██████████, Medical Contact Worker.

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) 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 material fact:

1. On January 27, 2012, Claimant filed an application for MA and SDA benefits. The application requested MA retroactive to October 1, 2011.
2. On April 13, 2012, the Department denied the application.
3. On June 14, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-two years old (DOB ██████████), has an eighth-grade education.

5. Claimant has no work history whatsoever.
6. Claimant has a history of schizoaffective disorder, alcohol abuse, post-traumatic stress disorder, and antisocial personality disorder. His onset date is 2006.
7. Claimant was never hospitalized as a result of his mental impairments.
8. Claimant currently suffers from schizoaffective disorder, alcohol abuse, post-traumatic stress disorder, and antisocial personality disorder.
9. Claimant is severely limited in basic skills such as the ability to understand, remember and carry out instructions, and the ability to make judgments on complex work-related decisions. 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 whole record, 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).

The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason:

1. Claimant's physical and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment:

12.03 Schizophrenic, paranoid and other psychotic disorders: Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for this disorder is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic 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:

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. Listing of Impairment 12.03, 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; see *also*, 20 CFR 404.1520(d).

The following is a five-step examination of Claimant's eligibility for Medicaid. The State of Michigan Department of Human Services is required by the U.S. Code of Federal Regulations (CFR) to use the U.S. Social Security Act Title XVI Supplemental Security Income five-step test, for evaluating applicants for the Michigan Medicaid disability program. 20 CFR 416.905, 404.1505; 416.920; 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has never worked in his life. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not engaged in substantial gainful activity. 20 CFR 404.1520(b), 416.920(b); Dept. Exh. 1, p. 8.

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is 2006. He began treating in 2008, and has continued in treatment since then. His diagnosis is schizoaffective disorder. Claimant's Exhibit 4 documents his treatment for four years, from 2009 to the present. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, p. 19; Clmt. Exh. 4, pp. 6, 9; see *also*, Clmt. Exh. 5, p. 3.

Based on this information of record, and all of the evidence in this case taken as a whole, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second eligibility requirement. 20 CFR 404.1520(c), 404.1521, 416.920(c).

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if Claimant's impairment is the same as, or equivalent to, an impairment in the federal Listing of Impairments, found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case it is found and determined that Claimant's impairment meets or is the equivalent of Listing 12.03, Schizophrenic, paranoid and other psychotic disorders, and its subpart, section 12.03C. This Listing is

set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; see *also*, 20 CFR 404.1520(d).

The following is an explanation as to how Claimant's impairment meets the severity requirements of Listing of Impairment 12.03 and subpart 12.03C. First, Listing 12.03 requires that Claimant have a diagnosis of schizophrenic disorder. Claimant first received this diagnosis on October 4, 2011, in a State of Michigan Psychiatric/Psychological Examination Report from his treating psychiatrist, Kehinde Ayeni, M.D., Psychiatry, Development Centers, Inc., Detroit. Claimant received the same diagnosis from Dr. Ayeni in two Annual Psychiatric Evaluations occurring March 9, 2012 and August 3, 2012. Dept. Exh. 1, p. 11; Clmt. Exh. 4, pp. 6, 10. Also in 2009, a psychologist consulted by the State of Michigan, examined Claimant and diagnosed schizoaffective disorder. Clmt. Exh. 5, p. 3.

Two other mental health care providers examined Claimant and diagnosed him similarly. Tonya Matiska and Merrilyn Thomas, both of whom are Licensed Medical Social Workers at Development Centers Inc., diagnosed Claimant with depressive disorder of unknown origin on February 20, 2009 and again on May 13, 2010. Clmt. Exh. 4, pp. 11, 14.

According, based on all of the above evidence and all the evidence in this case in its entirety, it is found and determined that Claimant meets the requirement of Listing of Impairment 12.03, in that he is diagnosed with schizophrenic disorder. Next it must be determined if the severity of his impairment meets the requirements of Listing subpart C.

Listing subpart C first requires that there be at least two years documented medical history of the disorder. Claimant's earliest documentation is from 2008, five years ago. The 2008 report of Dr. Sadasivan, Development Centers, Inc., indicates that the doctor examined Claimant on January 17, 2008. This documents that Claimant was treating at Development Centers, Inc. in January, 2008. Based on this information, it is found and determined that Claimant meets the first requirement of subpart C. Clmt. Exh. 3.

The second requirement of subpart C is that Claimant's disorder must have caused more than a minimal limitation of his ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support. Listing of Impairment 12.03C. The evidence that Claimant has more than minimal limitation is documented in four evaluations from 2008, 2010, 2011 and 2012.

The Mental Residual Functional Capacity Assessment dated March 5, 2008, signed by a Dr. Sadasivan, Development Centers, Inc., states that Claimant is "Markedly Limited" by his impairment in nineteen of twenty capacities. The sole capacity in which Claimant is only "Moderately Limited" is his ability to carry out simple one or two-step instructions. Clmt. Exh. 3.

Second, the July 8, 2010 Mental Residual Functional Capacity Assessment, signed by Kehinde Ayeni, M.D. Psychiatry, states that Claimant is Markedly Limited in twelve of twenty categories of mental capacity. Clmt. Exh. 2.

Third, the October 4, 2011 Mental Residual Functional Capacity Assessment by Dr. Ayeni states that Claimant is Moderately Limited in eleven of twenty categories, Markedly Limited in six categories, and Not Significantly Limited in three categories. Dept. Exh. 1, pp. 13-14.

Fourth, the March 9, 2012, Medical Source Statement of Ability to Do Work-Related Activities (Mental), also signed by Dr. Ayeni, states that Claimant is extremely affected by his impairment in six of ten categories, markedly affected in two categories and moderately affected in two categories. Dr. Ayeni identified as factors supporting his assessment, "Client has problems in groups. Client isolates. Client's sister does the shopping. Client has problems with memory also." Clmt. Exh. 1.

These four evaluations are consistent with Claimant's testimony and with the written statements of his stepsister, who cares for him. Claimant testified that he does not relate well to others. He forgets what he is asked to do and people get upset with him. He has a poor memory and cannot remember a television show two hours later. He has to be reminded to bathe. He is not getting along with family members recently because they treat him as if something is wrong with him and as if he is acting funny.

██████████, Claimant's stepsister, completed the Department questionnaire, Activities of Daily Living, on March 12, 2012, with regard to her brother. She lives with him. She washes and irons his clothes, cuts his hair, cooks his meals, and reminds him to bathe. He used to do all of these things himself. He cannot cook because he forgets that the stove is on and causes small fires in the kitchen. She does the housework because Claimant has a hard time following directions and doing small tasks. He cannot shop because he cannot count and find bargain products, and he buys things he doesn't need. He cannot prevent being overcharged at the store. She states that if she tells him to cut the grass he will water it instead. He watches cartoons all day long. He no longer engages in his previous hobbies of basketball and chess. Dept. Exh. 1, pp. 47-51.

Thompson reminds Claimant about all of his appointments. She wrote, "██████████ to me has changed for the worst. He doesn't talk, read, do any activities, follow directions, or remember important things." *Id.*, p. 51.

Having reviewed all of the evidence in this case in its entirety, it is found and determined that Claimant's disorder does cause more than a minimal limitation of his ability to do basic work activities.

Next it must be considered whether Claimant demonstrates symptoms and signs which are currently attenuated by medication and psychosocial support. Listing 12.03C.

The primary symptom is Claimant's auditory hallucinations. Claimant's auditory hallucinations are involuntary ("noncommand"), and, they occurred less frequently in 2012 than previously. Claimant testified he has conversations with a deceased friend, in which he hears the friend's voice. He also has conversations with a friend's brother, who is alive, but the conversations occur when the friend's brother is not present. At the psychiatric examination conducted at the request of the Department, Claimant reported that he hears voices when he is arguing with his girlfriend, saying, "This ain't the way to go, you're better than that." Dept. Exh. 1, pp. 1, 12; Clmt. Exh. 5, p. 2.

Claimant has been under the care of a psychiatrist since 2008, and his prescriptions include Lexapro, Trazodone, Lamictal, Effexor and Xanax for depression, Seraquel for paranoia, Abilify for schizophrenia, and Vicodin for pain. Clmt. Exhs. 3, 4, 6.

Based on this evidence and all of the evidence in this case considered as a whole, it is found and determined that Claimant meets the Listing subpart 12.03C requirement of exhibiting symptoms and signs which are currently attenuated by medication and psychosocial support. He has noncommand auditory hallucinations, and he has been in psychiatric treatment, including prescription medication, for over five years. This evidence suffices to meet the "signs and symptoms" portion of Listing 12.03C.

Last, Claimant must meet the requirement of at least one of three types of functional inability, which are listed in Listing 12.03 C. Having reviewed all of the evidence in this case as a whole, it is found and determined that Claimant meets the third item, in that he has a current history of one or more years' inability to function outside a highly supportive living environment and has the indication of continuing to need such an environment. Listing 12.03C3.

In this case, Claimant's testimony and the written statements of the stepsister [REDACTED] [REDACTED] show a picture of a person who is not functioning on his own, who has not functioned on his own for at least one year (the date of [REDACTED] statement is March 12, 2012), and who continues to need a highly supportive living environment. Claimant cannot cook, perform housework and yard work, and he needs reminders to bathe and keep appointments, as detailed above. Having reviewed all of the evidence presented in this case as a whole, it is found and determined that Claimant has met the requirements of subpart C3 in that he requires a highly supportive living environment, he has needed it for at least a year, and he continues to need this environment.

This concludes the analysis as to whether Claimant meets the medical severity requirements of the federal Listing of Impairments. Specifically, it is found and determined, based on all the evidence in this case, that Claimant has a mental impairment or its equivalent, schizophrenic disorder, of a severity that qualifies him for Medicaid based solely on his mental impairment. Listing of Impairment 12.03.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 12.03, Schizophrenic, paranoid and other psychotic disorders, and its subpart, 12.03C. Claimant has therefore

established eligibility for Medicaid based on his mental impairment. Listing of Impairment 12.03.

As Claimant is found by the undersigned to be eligible for MA based solely on a mental impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence. *Id.*

In conclusion, based on the Findings of Fact and Conclusions of Law above, and all of the evidence in the record, the Claimant is found to be

NOT DISABLED **DISABLED**

for purposes of the MA program.

The Department's denial of MA benefits to Claimant is

AFFIRMED **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 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant 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, and for the reasons stated on the record finds that Claimant

DOES NOT MEET **MEETS**

the definition of medically disabled under the Medical Assistance and State Disability Assistance program(s) as of the onset date of 2006.

The Department's decision is

AFFIRMED **REVERSED**

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING ACTION WITHIN TEN DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate processing of Claimant's MA, MA-retroactive and SDA application, to determine if all nonmedical eligibility criteria for MA and SDA benefits have been met.
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA and SDA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy.
3. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate procedures to schedule a redetermination date for review of Claimant's continued eligibility for program benefits in June, 2014.
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: June 10, 2013

Date Mailed: June 12, 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:

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- 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

JL/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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