

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

IN THE MATTER OF:

██████████
████████████████████
████████████████████

Reg. No.: 2013-31135
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 19, 2013
County: Wayne (19)

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 June 19, 2013, at Inkster, Michigan. The Claimant appeared and testified at the hearing. Participating on behalf of Claimant was his Authorized Representative, ██████████. Participating on behalf of the Department of Human Services (Department) was ██████████, Eligibility Specialist.

ISSUE

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

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 October 4, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to July 1, 2012.
2. On February 8, 2013, the Department denied the application.
3. On February 19, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-eight years old (██████████), has a tenth-grade education.

5. Claimant last worked in 2012 as a forklift operator. Claimant has been a forklift operator since 1985. He has no other relevant work. Claimant's relevant work history consists exclusively of unskilled, heavy-exertional work activities.
6. Claimant has a history of bipolar disorder, scoliosis, chronic back pain, hip and knee pain, and carpal tunnel syndrome. His disability onset date for bipolar disorder is childhood [REDACTED]).
7. Claimant was hospitalized at least twice as a result of bipolar disorder, including suicide attempts. The discharge diagnosis was stable condition with recommendations for therapy.
8. Claimant currently suffers from bipolar disorder, scoliosis, chronic back pain, hip and knee pain, and carpal tunnel syndrome.
9. Claimant is severely limited in the basic living skills of sitting, standing, walking, lifting and carrying. 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 mental impairment meets a Federal SSI Listing of Impairment or its equivalent.

State the Listing of Impairment:

12.04C Chronic affective disorder

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 not worked since June, 2012. 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. 16.

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 childhood. Claimant testified that as a child, "I stuck by myself." He had one friend, he didn't play much, and, "I kept myself sheltered." He said he was a "homebody." As he grew older he used drugs because of depression. He was jailed four times on charges of domestic violence. He has been hospitalized four times for psychiatric impairments, at least one of which was authorized by probate court. He has attempted suicide at least once. He was seen in the Emergency Department two times as well. He is currently in treatment with a psychiatrist and a therapist. He has also been in recovery centers for substance abuse. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1.

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 12.04C, Chronic affective disorders. This Listing is set forth as follows:

12.04C Medically documented history of a 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:

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. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 12.04C; see *also*, 20 CFR 404.1520(d).

Claimant's medically documented history of record in this case is as follows: In February, 2011, Claimant was diagnosed with acute psychosis and major depression with suicidal ideation, at [REDACTED]. Claimant had a possible overdose of medication. Dept. Exh. 1, pp. 62-88, 184-194, 235-249.

From [REDACTED] he was transferred to [REDACTED]. *Id.*, p. 239. He was released with instructions to follow up with psychiatric care at [REDACTED]. *Id.*, p. 208.

Claimant treated a [REDACTED] from February-June, 2011. He gave a psychiatric history of substance abuse treatment at [REDACTED] on three occasions. He gave a lengthy history of alcohol, marijuana, cocaine, LSD, PCP, and prescription medication use. He attempted suicide 10-12 years earlier and was hospitalized at [REDACTED]. He attempted suicide again in 2006 and was hospitalized. *Id.*, pp. 275-283.

At [REDACTED], Claimant was diagnosed with major depressive disorder, recurrent, and polysubstance dependence. A February 17, 2011 record states, "Client presented with a range of emotion ranging from angry to tearful...He is quick to anger." He was prescribed Zoloft and Abilify by [REDACTED], M.D., Psychiatry. *Id.*, pp. 277, 279.

Next, on July 29, 2012, Claimant was in [REDACTED] for three days. His discharge diagnosis was attempted suicide secondary to acetaminophen overdose, marijuana abuse, major depression, and gastroesophageal reflux. He was placed in an inpatient psychiatric unit in the hospital. His discharge diagnosis was guarded. *Id.*, pp. 54-61, 89-131, 195-196.

Claimant was then transferred on August 1, 2012 to [REDACTED] - [REDACTED], for psychiatric treatment. He was diagnosed with depression of unknown origin, and cannabis and opiate abuse. He was given an "Associated Diagnoses" of psychotic disorder of unknown origin. He was prescribed Zoloft and discharged two days later, on August 3, 2012. *Id.*, pp. 250-274.

In August, 2012, Claimant began outpatient treatment at [REDACTED], where he continues in treatment to this day. His diagnosis is bipolar disorder II, depressed. Racing thoughts, anxiety, depression, mood swings and violent behavior were noted. He is prescribed Depakote and Zoloft by [REDACTED], M.D., Psychiatry. He sees [REDACTED] a month, and he sees a therapist, [REDACTED], M.S.W., twice a month. Psychiatric Progress Note, Community Care Services, February 12, 2013 (2 pp.); Dept. Exh. 1, pp. 20-183.

Claimant's testimony was consistent with the medical records. Claimant testified that his work history as a forklift operator consists of a series of short-term employment periods after which he quits or is fired. He leaves these jobs because of depression,

back pain, anxiety around people, and job stress. He stated he often takes out his anger at home, he misses work, he becomes closed off from people, and soon he is out of work again. He has lost about fifteen jobs, thirteen of which he quit before ninety days of employment. He has not been employed for longer than six months at any one job.

Claimant testified he was depressed as a child. His mother was manic-depressive and attempted suicide many times. His father died, and afterwards Claimant took care of his mother and siblings. His brother was murdered. His sister left the family and was later found in a nursing home. In 2009-2010, Claimant's mother and sister both died.

Claimant testified that he gets angry "really, really easily," and takes medication to keep himself under control. He stated that his stress and anxiety levels are very high. He currently lives with his ex-wife, with whom he engages in escalating arguments. He has been jailed four times for domestic violence.

Claimant testified he has always had suicidal thoughts. He also testified to auditory hallucinations. He hears his mother's voice calling him by name. He stated he feels that his current treatment helps him in that it stops him from having evil thoughts.

Claimant testified that he has feelings of hopelessness and worthlessness. He lives in his ex-wife's home, and they are about to be in foreclosure and will be homeless. He is afraid of what this will do to him and his family. He currently acts as a helpmate to his ex-wife with household chores, and his son does the outside work at the house.

Claimant testified that since the 2012 suicide attempt, he spends the day "cooped up" in his room listening to music, watching television and daydreaming. He gained twenty-five lbs. in the last year, and he believes it is caused by his medications, or lack of activity.

In response to a Department questionnaire, Claimant stated he has bad dreams, night sweats, and, he only sleeps for a couple of hours. He has no desire to bathe or eat, and he alternates between starving himself and binge eating.

Having considered this evidence, the evidence presented above in the Step 2 analysis, and all of the evidence in this case as a whole, it is found and determined that Claimant has met the severity requirements of Listing of Impairment 12.04C, or its equivalent. Claimant's impairment began in childhood and has clearly lasted more than two years (duration requirement). Claimant has not been able to maintain employment because of depression and regularly leaves jobs in less than three months (more than a minimal limitation of ability to do basic work activities). Claimant has symptoms such as anger, anxiety, hallucinations, feelings of hopeless and worthlessness, racing thoughts, mood swings, suicidal thoughts and attempts, violence toward others, lack of daily activity, and depression (signs and symptoms).

Claimant receives treatment from a psychiatrist and a therapist at Community Care Services (medication and psychosocial support). He lives with his ex-wife in her house, he does little or no housework and yard work (highly supportive living arrangement), he stays alone in his room all day, and does not appear to be able to take responsibility for his own needs (continued need for a highly supportive living arrangement).

It is therefore found and determined that Claimant's mental impairment meets, or is equivalent to, the requirements of Listing of Impairment 12.04C, Chronic affective disorders. Claimant therefore has established eligibility for Medicaid based on his mental impairment. Listing of Impairment 12.04C.

In addition, the issue of substance abuse must be considered in this case, as the Claimant has a history of such activity. Federal regulations require that if the Claimant's substance abuse is a contributing factor that is material to the determination of the impairment, MA benefits must be denied. Materiality means that the Claimant's disability would cease if the Claimant stopped using drugs or alcohol. If it is determined therefore that the cessation of substance abuse would end, or remedy, Claimant's impairment, then he must be denied MA benefits. 20 CFR 404.1535 and 416. 935.

Applying the Federal regulations to the facts of this case, and having considered all of the evidence in this case as a whole, it is found and determined that Claimant's substance abuse is not a contributing factor material to the determination of his mental impairment. Claimant suffered depression in childhood, before he ever used drugs. His testimony was that he used drugs to help him with the depression. Also, the psychiatrists who diagnosed him diagnosed mental disorders such as major depression and bipolar II, as his primary disorders. They prescribed medications to alleviate his depression, and psychotherapy to assist him in addressing with his mental disorder. These medical diagnoses do not identify substance abuse as a material factor in Claimant's primary diagnosis.

Indeed, it is possible that Claimant's substance use is a measure of self-medication and treatment, and in fact, that it is his solution to the problem and not the problem in and of itself. Accordingly, it is found and determined that Claimant's history of substance abuse is not a material factor in the determination of his mental impairment.

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 through Steps 4 and 5 of the five-step Medicare eligibility sequence.

In conclusion, based on the Findings of Fact and Conclusions of Law above, 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, should he apply for them.

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 program as of the onset date of childhood (DOB 8/27/1964).

The Department's decision is

AFFIRMED **REVERSED**

THE DEPARTMENT SHALL BEGIN THE PROCESS OF THE FOLLOWING STEPS WITHIN TEN DAYS OF THE MAILING OF THIS ORDER:

1. Initiate processing of Claimant's October 4, 2012, application, to determine if all nonmedical eligibility criteria for MA benefits have been met. Claimant's onset date of disability is childhood (DOB 8/27/1964).
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA benefits to Claimant, including supplements for retroactive 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 August, 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: July 8, 2013

Date Mailed: July 9, 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

JL/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]