

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

**IN THE MATTER OF:**

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

Reg No.: 2013-3366  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: February 7, 2013  
Oakland County DHS (04)

**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, a hearing was held in Pontiac, Michigan on Thursday, February 7, 2013. The Claimant appeared and testified. The Claimant was represented by ██████████ OMAS, the Claimant's Authorized Hearing Representative, who appeared on behalf of the Claimant. Participating on behalf of the Department of Human Services ("Department") was ██████████ Assistance Payments Supervisor.

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On June 20, 2013, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

**ISSUE**

Whether the Department properly determined that the 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. The Claimant submitted an application for public assistance seeking MA-P benefits, retroactive to June 2012, on June 15, 2012.

2. On August 2, 2012, the Medical Review Team (“MRT”) found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on August 8, 2012.
4. On October 3, 2012, the Department received the Claimant’s timely written request for hearing.
5. On December 3, 2012 and June 20, 2013, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments due do back pain, high blood pressure, and black spot on his lung.
7. The Claimant alleged mental disabling impairment(s) due to bipolar disorder and depression.
8. At the time of hearing, the Claimant was ■ years old with a ■ birth date; was 5’9” in height; and weighed approximately 255 pounds.
9. The Claimant completed his education to the 6<sup>th</sup> grade, and with an employment history with no substantial gainful activity.
10. 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”).

Disability is defined as 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(a). The person claiming a physical or mental disability has the burden to establish it 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 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to

provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 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) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c).

Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples 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.

*Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claimant alleges disability due to alleged physical disabling impairments due do back pain, high blood pressure, and black spot on his lung.

The Claimant has alleged mental disabling impairments due to bipolar disorder and depression. The Claimant is diagnosed with mood disorder mixed and alcohol dependence.

A summary of the medical evidence presented follows.

On [REDACTED], the Claimant presented to the emergency room with complaints of shaking, nausea and sweats due to alcohol withdrawal and bloody emesis in his vomit. The Claimant's history of alcohol abuse was documented. At the time of presentation the notes indicate that the Claimant had been drinking up to 300 grams of alcohol per day on average over the past week. The Impressions were impending alcohol withdrawals, recent hematemesis without evidence of active GI bleed, alcohol misuse

and dependence, hypertension, reactive airways disease by history, acute kidney injury, resolved, mild alcoholic hepatitis with low Maddrey score. The Claimant's liver was deemed well compensated. The need for alcohol cessation and continued abstinence was discussed and noted that the Claimant was at risk for readmission in the near future for similar complaints. The Claimant was released after a one day stay.

A psychiatric examination was performed on [REDACTED] by the Claimant's then treating doctor noting alcohol dependence and bipolar mixed disorder. This exam was completed at a time when the Claimant had received some treatment at the examining facility completing the examination. A residual functional capacity assessment was completed which found that the Claimant was markedly limited in Understanding and Memory in his ability to remember one-two step instructions, and understand and remember detailed instructions. The Claimant was markedly limited in Sustained Concentration and Persistence in his abilities to carry out detailed instructions, maintain attention and concentration for extended periods, to work in coordination with or proximity to others without being distracted by them and ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods. The Claimant was markedly limited in Social Interaction in ability to accept instructions and respond appropriately to criticism from supervisors and ability to maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness. The Claimant was markedly limited in Adaption and in ability to respond appropriately to a change in work setting and ability to travel in unfamiliar places or use public transportation and ability to set realistic goals or make plans independently of others.

The Psychiatric Evaluation by the Claimant's then treating doctor was conducted on [REDACTED] and noted that Claimant comes regularly to see the doctor and is disheveled. The treatment began in [REDACTED]. Mental status examination notes alert oriented fairly good member, labile affect, hyperactivity and good reality contact. The Claimant was evaluated as able to take care of basic needs. The Diagnosis was bipolar disorder and alcohol dependence. GAF score was 50 down from 52.

The Claimant has consistently continued to treat for his mental health issues for several years. The Claimant began treatment at Oakland Family services in [REDACTED]. He was seen in [REDACTED] for an assessment for depression and difficulty concentrating, past substance abuse. Overall assessment noted that memory for remote events appeared only fair, has trouble remembering some remote events like death of his father. Insight has been limited and reports problem with alcohol and insisting that he engage in outpatient treatment as adequate despite cravings and recent use of alcohol. The Claimant presented with limited judgment, was sober to pass the PBT test with a negative for alcohol, but reported that he had drunk day before. The Claimant's goal was to get done with alcoholism and was referred to PACE for a high level of care

detoxification. The diagnosis was alcohol dependence with physiological dependence and depressive disorder. The GAF score was 49. The Claimant was a self-referral.

Beginning on [REDACTED] throughout this period, the Claimant was tested with negative results for alcohol use. The Claimant underwent therapy in both individual and group settings and was medication compliant. During this period he had symptoms for racing thoughts, very poor sleep, poor focus, pressure of speech, mood swings and episodes of deep depression. Noted to get agitated and angry but walks away before he fights with anyone. At various exams his mood was sad, anxious, compulsive and labile. Insight was fair and impulse control was limited. On [REDACTED] Claimant's diagnosis changed to alcohol dependence and bipolar I disorder, most recent mixed without psychotic features. Treatment records during this period indicate the Claimant was medication compliant. The Claimant's GAF score remained consistent at 50.

In [REDACTED] the Claimant was again evaluated noting that diagnosis was still alcohol dependence with physical dependence, (primary) currently meeting dependence criteria of tolerance, withdrawal and inability to cut down or reduce. Secondary on axis I is Depressive Disorder, but it cannot be determined that these symptom are due to alcohol use. In [REDACTED] the Claimant was still in treatment with same diagnosis. The Claimant has made significant progress in identifying triggers of substance use and coping methods and understanding issued related to his depression. The Claimant's attendance record indicates consistent outpatient treatment from [REDACTED] through [REDACTED] on a weekly and bi weekly basis. A drug screen test for the period [REDACTED] through [REDACTED] 012 notes negative test results for alcohol and drugs.

No medical evidence was submitted which substantiated the Claimant's alleged physical impairments of back pain, hypertension/ high blood pressure and black spot on lung.

Treatment records were also submitted from a different treatment program beginning [REDACTED]. At the time of the exam the Claimant had resumed drinking. At the exam the examiner noted a dysphoric mood, thought process was goal directed, attention was adequate. The Claimant was diagnosed with mood disorder, with alcohol dependence. Substance abuse treatment was recommended. The Claimant indicated that he was drinking 1 pint a day and that he was going to start AA meetings. The claimant continued to be seen and in [REDACTED] had been drinking after 9 months of sobriety.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The

medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

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, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnoses of depression, bipolar disorder, mood disorder and alcohol dependence. Listing 12.0- Substance Addition Disorders and 12.04 Affective disorders were considered and are analyzed below.

**12.09 Substance addiction disorders:** Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

A. Organic mental disorders. Evaluate under 12.02.

B. Depressive syndrome. Evaluate under 12.04.

C. Anxiety disorders. Evaluate under 12.06.

D. Personality disorders. Evaluate under 12.08.

E. Peripheral neuropathies. Evaluate under 11.14.

F. Liver damage. Evaluate under 5.05.

G. Gastritis. Evaluate under 5.00.

H. Pancreatitis. Evaluate under 5.08.

I. Seizures. Evaluate under 11.02 or 11.03.

In light of the above, Listing 12.04 was considered. Listing 12.04 provides:



**12.04 Affective disorders:** Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in 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
- 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 of 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 records presented show a self-reported request for treatment for psychiatric problems diagnosed as mood disorder, bipolar disorder and alcohol abuse. The Claimant has been medication compliant during the period and at a time when he was not using alcohol, his then treating psychiatrist found after evaluation significant marked limitations in Understanding and Memory, Sustained Concentration and Persistence, Social Interaction and Adaption. At the hearing the Claimant credibly testified to repeated nightmares, had thoughts of suicide without action, continued depression based upon the hopelessness of his life, poor concentration and crying spells. The medical records and the mental residual capacity assessment document problems with sleeping, hyperactivity, difficulty concentrating or thinking, difficulties maintaining concentration persistence and pace and lastly social functioning. Thus it is determined that the Claimant has demonstrated that his medical impairment meets or is the medical equivalent of listing 12.09 and 12.04 A and B for Depression.

As a result, the medical records and testimony demonstrate clearly that the Claimant has marked restrictions in daily living and social functioning and adaptation and concentration, persistence and pace and has a GAF score of 50 which has not fluctuated. The Claimant has limited education and difficulty reading and writing, having completed the 6<sup>th</sup> grade and dropping out of school at 16. 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),

2013-3366/LMF

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 12.03. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

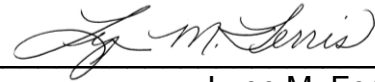
In this case, the Claimant is found disabled for purposes of the MA-P program.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant is disabled for purposes of the MA-P benefit program. Accordingly the Department's Decision is hereby REVERSED.

Accordingly, It is ORDERED:

1. The Department's shall begin processing the Claimant's June 15, 2012 application to determine Claimant's non- medical eligibilty.
2. The Department shall complete a review of this case shall be set for July 2014.



---

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

Date Signed: July 17, 2013

Date Mailed: July 17, 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)

2013-3366/LMF

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/cl

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