

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

IN THE MATTER OF:

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

Reg. No.: 2013 17352
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 24, 2013
Wayne County DHS (82)

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 conducted from Detroit, Michigan on June 24, 2013. The Claimant appeared and testified. ██████████ Claimant's Authorized Hearing Representative also appeared. ██████████ ES, appeared on behalf of the Department of Human Services ("Department").

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 on August 21, 2012.
2. On September 12, 2012 the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on September 14, 2012.

4. On December 5, 2012, the Department received the Claimant's timely written request for hearing.
5. On February 12, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled.
6. An Interim Order was issued on June 26, 2013, accepting new evidence submitted at the hearing by the Claimant.
7. New evidence was received and sent to the State Hearing Review Team on June 26, 2013.
8. On July 29, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled.
9. The Claimant alleged mental disabling impairments of bipolar disorder, and personality disorder, schizophrenia and intellectual disability with a global IQ of 61.
10. The Claimant's physical impairments due to inability to digest food due to trauma to his stomach due to stab wounds.
11. At the time of hearing, the Claimant was [REDACTED] years old, with a [REDACTED], birth date. The Claimant's is 6'0" in height; and weighs 170 pounds.
12. The Claimant has the equivalent of a 9th grade education and also attended special education classes throughout his schooling. The Claimant has no math skills and has taken and failed the GED exam four times. The Claimant has an employment history working as a bus boy for one year.
13. The Claimant's impairments have lasted or are expected to last for 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 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). 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 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, 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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).

The Claimant alleged mental disabling impairments of bipolar disorder, and personality disorder. schizophrenia and intellectual disability with a global IQ of 61.

The Claimant was most recently evaluated by his treating psychiatrist in a psychiatric assessment by his treating doctor conducted on [REDACTED]. The Diagnosis was bipolar disorder, poly substance dependence in remission and antisocial personality disorder. The GAF score was 48. The medical report indicates that the Claimant was

seen for medication maintenance checkup. The report notes good grooming on time, good orientation, calm behavior, good eye contact and receptive to advice.

An annual psychiatric evaluation was conducted on [REDACTED] 2012 by the Claimant's current psychiatrist. The report noted that the Claimant's reported symptoms are chronic and have been present for more than ten years. Psychological stressors are overwhelming. Family issues are stressful. The Claimant's trauma history included childhood sexual and physical abuse. Substance abuse history noted. Level of education noted to be 8th grade and past prison time for nonviolent offense. The report noted the risk factors to be chronic mental illness and limited education. The assessment was bipolar disorder, poly substance abuse in remission and antisocial personality disorder with a GAF of 48. Report noted patient doing well and stable in treatment over past year.

The Claimant was hospitalized in [REDACTED] for a 3 day stay due to abdominal pain and vomiting with chest pain. The final diagnosis was acute bowel obstruction after CT scan, acute hypokalemia and intractable nausea. The Claimant was discharged with his condition improved.

On [REDACTED] 13, extensive psychological testing and mental status evaluation was performed. The evaluation paints a lifelong struggle with diminished intellectual capacity and trauma at age 9 when hit by a drunk driver and was unconscious for an extended period. The report noted that the Claimant had a history of drug use including heroin and was currently abstinent since 2009 and attends AA/NA twice weekly. The report notes Claimant has heard voices since the age of 20. The Claimant was described as always slow and in special education classes, having dropped out of school in 9th grade. Claimant's brother observed that the Claimant was never able to live independently or manage his money or pay bills. During the examination the Claimant could not, when asked, make correct change. The Claimant's recent and remote memory was assessed as very poor and had difficulty with specifics of history, such as where he worked. The memory deficiency was also borne out by testing during the examination. He could not count backward and was unaware of reading mistakes. The Claimant often misunderstood questions, especially directions. The Claimant detailed for the examiner a history of hearing voices telling him to do things he should not do and seeing visions that he experiences as scary.

The report evaluated the Claimant's judgment as poor, sometimes not taking his medications or associating with individuals who use drugs. The evaluator noted that the Claimant has limited insight regarding his schizophrenia, and even though he knows he should ignore the voices he is challenged by them but eager to take his medications, acknowledging that they help. The Claimant had noted difficulty with any form of abstract thought. The examiner noted significant difficulty going to sleep due to his anxiety about psychotic experiences and feelings of being threatened.

The Claimant was given a battery of tests and performed poorly as would be expected given his condition. His full scale IQ of 61 accurately reflected his very limited thinking and reasoning ability and put him in the lowest percentile of the population as regards intelligence. The Claimant's grade equivalent score for math was 1.9, reading 5.8 and sentence comprehension grade 4.9. In summary, the examiner noted chronic difficulties throughout Claimant's lifetime, with housing, employment, the law and self care. The report notes: "He is not able to manage his money. He is mentally retarded with an IQ of 61, and has limited understanding and memory and poor judgment. ...Schizophrenia, which he has suffered from since his late teens is also known to reduce IQ and short term memory and has a negative impact on overall cognitive function. Because he presents himself well, shaking hands firmly, making good eye contact and speaking pleasantly, people may often underestimate the extent of his cognitive impairment." The Report concludes, "because of his cognitive limitations, misunderstandings, and poor judgment, [REDACTED] is at risk of placing himself in dangerous situations. He needs to have a structured, safe living situation, and an adult who will help him manage his money and take his medications."

The DSM IV Diagnosis was mild mental retardation, schizophrenia, and poly substance abuse in remission. Current GAF was 35. Prognosis was Claimant's problems were chronic and intractable. Recommendations were for ongoing supervision to take medications correctly, proper food consumption in proper amounts, and help handling his money. A group home with a structured setting would be an appropriate placement with a permanent case manager/social worker. Without continued follow up with psychiatric care and medications, the examiner believed the Claimant could become a danger to himself or others.

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 medical evidence establishing that he does have some physical and mental 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 Claimant has alleged mental disabling impairments due to Bipolar disorder Schizoaffective Disorder, and Depression.

Listing 12.04 Affective Disorders (bipolar and schizophrenia) and 12.08 Personality Disorders were review as well as 12.05 Intellectual Disorders were reviewed.

Listing 12.05 is reviewed below and requires:

12.05 *Intellectual disability*: intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

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

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, 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.

In this case, the record reveals current treatment for bipolar disorder, and personality disorder on an ongoing basis. The Claimant's Global IQ of 61 and his tested intellectual

deficits as demonstrated by the recent and extensive Psychological Testing and Mental Status Evaluation as set forth above in detail and GAF of 35 with lifelong schizophrenia clearly demonstrate that the Claimant has met the listing or the medical equivalent of Listing 12.05. Medical records documenting the Claimant's course of treatment clearly document that the Claimant's ability to function is severely limited due to his mental impairments and intellectual deficit. The Claimant credibly testified to his inability to remember things, depression, hearing voices that tell him to do things that would be harmful to him. The most recent GAF score was 35. During the hearing the Claimant's inability to recall history and answer questions was observed as real and authentic.

The medical records document persistence either continuous or intermittent of several aspects of 12.05 B And C.

As a result, the records and testimony show that the Claimant has marked restrictions in daily living and social functioning and has a GAF score of 35 and an IQ of 61. 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 12.05. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required. Additionally it is determined that drug use was not material to the Claimant's mental disabling impairments.

It is noted that the Claimant has not applied for State Disability Assistance a form of State cash assistance and that the Claimant may apply for this benefit at any time.

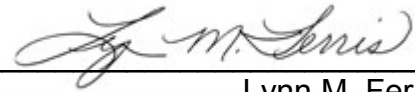
DECISION AND ORDER

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 and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the August 21, 2012 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.

3. The Department shall review the Claimant's continued eligibility in August 2014 in accordance with department policy.



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

Date Signed: August 29, 2013

Date Mailed: August 29, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

2013-17352/LMF

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

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