

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2013-21979
Issue No.: 2009
Case No.: ██████████
Hearing Date: May 1, 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 May 1, 2013, at Inkster, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of the Claimant were his Authorized Representative, ██████████. 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) 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 July 19, 2012, Claimant applied for MA benefits. The application requested MA retroactive to April 1, 2012.
2. On September 26, 2012, the Department denied the application.
3. On January 3, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is thirty-seven years old (DOB ██████████), has a high school diploma and some college education.

5. Claimant last worked in November, 2012 as a retail sales manager. Claimant also performed relevant work as a fire extinguisher technician. Claimant's relevant work history consists exclusively of unskilled, medium and heavy exertional work activities.
6. Claimant has a history of bipolar disorder, depression, anxiety, and back and right elbow pain. His disability onset dates are July, 2012 (mental) and December, 2012 (physical).
7. Claimant was hospitalized three times as a result of psychiatric issues, and twice as a result of alcohol dependence.
8. Claimant currently suffers from bipolar disorder, depression, anxiety, and back and right elbow pain.
9. Claimant is severely limited in the basic life skills of concentration, pace and persistence. 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 (select ONE):

1. Claimant's mental impairment meets a Federal SSI Listing of Impairment or its equivalent.

State the Listing of Impairment:

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. *Difficult 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 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. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 12.04 (asterisks indicate features of severity that are present in this case).

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 2010. 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. 24.

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 of bipolar disorder is 1990, when he was fourteen years old. In 1990, he began experiencing episodes of feeling elated and then becoming very depressed. In 2012 and 2013, he was diagnosed with bipolar disorder, major depression, panic disorder, agoraphobia, and mood disorder, not otherwise specified. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, pp. 30, 41, 51, Clmt. Exh. A, pp. 18, 26, 27, 44, 63, 75, 90, 138, 152, 153, 157, 159, 167, 173, 176, 180, 183, 184; Clmt. Exh. B, pp. 71, 76, 80, 84, 88, 91, 94.

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 in severity 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 12.04, Affective Disorders, and its subparts, A3 and B. This Listing is set forth above in full. 20 CFR

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

Having reviewed all of the evidence in this case in its entirety, it is found and determined that Claimant meets the severity requirements of Listing 12.04, as follows. Claimant's testimony and the records indicate that Claimant has all nine of the characteristics of a depressive syndrome, and four of the eight characteristics of a manic syndrome. These two syndromes are set forth in Listing 12.04A1 and A2. Clmt. Exh. A, pp. 18, 26.

As Claimant meets the requirements of both subparts A1 and A2, the most accurate definition of his situation in the Listings is subpart A3, bipolar syndrome. Having considered all of the evidence in its entirety, it is found that Claimant has proved that he meets the severity requirements of subpart A3, and it is now necessary to determine whether Claimant meets the severity required by subpart B. Listing of Impairment 12.04.

Subpart B looks at the severity question in terms of duration and consequences. In this case items 2 and 4 are present from subpart B. Item 2 requires that there be marked difficulty in maintaining social functioning. Claimant testified at the hearing that he spends his time "sitting around," and sometimes he does not get out of bed during the day. He testified that experiences "a sense of paralysis." He is "very withdrawn" and "socially isolated." He has not seen friends in the past year. He experiences lethargy and fatigue, and has to force himself to do things at times. He cannot deal with other people, and when he was working he tried to avoid talking with anyone. He thought people might think he was a "jerk." *Id.*

Next, with regard to item 4, this item considers whether there have been repeated episodes of decompensation, each of extended duration. Claimant was first admitted to a psychiatric ward of a hospital in November, 2011. The length of his stay is unknown. Clmt. Exh. B, p. 1.

Claimant's second admission to a psychiatric ward was in July, 2012. On July 2, 2012, Claimant was admitted as a detox patient. After three days, he was moved to the psychiatric ward, where he spent seven days. Clmt. Exh. A, p. 173; Clmt. Exh. B, p. 7.

Claimant's third admission to a psychiatric ward was in December, 2012. On December 5, 2012, Claimant underwent surgery for a fractured humerus, and then was admitted to the medical unit at ██████████ for seven days for detox treatment. On December 12, 2012, he was transferred to the psychiatric unit for six days. The diagnosis was mood disorder, not otherwise specified, and alcohol dependence and withdrawal. Clmt. Exh. A, pp. 63-151.

The Claimant's three hospitalizations for psychiatric impairment occurred during a series of hospitalizations, recovery and rehab treatment programs for alcoholic dependence. In July, 2009, Claimant was in ██████████ for alcohol dependence. Clmt. Exh. A, p. 19.

In February, 2012, Claimant entered the Hegira program, where he attended Smart Recovery meetings for three months. Clmt. Exh. B, p. 1.

From March 25-28, 2012 and April 7-8, 2012, Claimant was admitted to [REDACTED] for alcohol dependence, and was also evaluated by the psychiatric unit. The diagnosis was depressive disorder. Clmt. Exh. A, p. 41.

From April 29-30, 2012, Claimant was admitted to [REDACTED] for one day, for alcohol dependence. He was also diagnosed with anxiety by the psychiatric unit. *Id.*, pp. 1-17.

In May-June, 2012, Claimant was at [REDACTED] for two months. During that time, he was admitted to [REDACTED] for two days for alcohol dependence, and was seen once in the emergency department. *Id.*, pp. 28, 31, 43-62.

In July, 2012, he moved to a Lighthouse ¾ facility. He attends AA weekly meetings there. Clmt. Exh. B, p. 10.

In addition to Claimant's hospitalizations and recovery treatments, Claimant is in the care of a psychiatrist and treats regularly at [REDACTED]. He began treatment at [REDACTED] February, 2012, and was diagnosed with major depressive disorder, recurrent, unspecified. The diagnosis was later changed to bipolar disorder, most recent episode depressed, severe without psychotic features. Claimant's third diagnosis was panic disorder without agoraphobia. The fourth diagnosis was that Claimant has a dual diagnosis, mood disorder and alcohol dependence. The changes may have been as a result of a suicide attempt (cutting wrist) and 24-hour auditory hallucinations. Clmt. Exh. A, pp. 18, 26; Clmt. Exh. B, pp. 71, 76, 80, 84, 88, 91, 94.

Having considered all of this evidence and all of the evidence in this case in its entirety, it is found and determined that Claimant has had repeated episodes of decompensation, each of extended duration. While it is true that the majority of Claimant's decompensation events have been alcohol-related, he was hospitalized in a psychiatric ward on at least three occasions for a total of at least thirteen days.

Considering then whether Claimant has met the severity requirements of Listing of Impairment subpart 12.04B, it is found and determined that Claimant has presented sufficient evidence to show that he does meet two requirements in subpart B. This conclusion, combined with the conclusion set forth above, that Claimant meets the requirements of 12.04A, results in a determination that Claimant meets the severity definition of Listing 12.04 Affective Disorders.

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

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

There is one further issue to be addressed in this case, and that is whether Claimant's substance abuse is material to his impairment. The Code of Federal Regulations states that if Claimant's impairment would be cured if he stopped using drugs or alcohol, then substance abuse is "material" to the impairment and Claimant shall be denied benefits. On the other hand, if it is determined by the factfinder that the Claimant's impairment would *not* be cured if Claimant stopped his substance abuse, then the substance abuse is not material to the impairment, and Claimant is entitled to benefits. 20 CFR 404.1535, 416.935.

Claimant's most recent diagnosis is a dual diagnosis, psychiatric and substance abuse. Clmt. Exh. B, p. 94.

At the hearing Claimant testified that when he entered ██████████ in December, 2012, he had not been drinking for five months. He also testified that he lives now at L█████████ which is a "sober house," and he does not use alcohol. The medical records indicate that at sixteen psychotherapy sessions between February, 2012-March, 2013, he specifically reported to his therapist at Hegira that he was not involved in substance abuse Clmt. Exh. A, pp. 30, 35, 37; Clmt. Exh. B, pp. 11, 13, 16, 20, 22-24, 27-28, 33-34, 38-39, 55, 57-58, 60, 66.

Having considered all of this evidence in its entirety, the factfinder concludes that there have been times when Claimant has not engaged in substance abuse, but his psychiatric diagnosis and treatment continued. It is also noted that Claimant's psychiatric symptoms began at age fourteen, and the substance abuse began a few years after that. This history supports an inference that because Claimant's mental impairment precedes the substance abuse, there is no reason to think that it will end merely when the substance abuse ends.

Therefore, having carefully considered all of the evidence in this case in its entirety, it is found and determined that Claimant's substance abuse is not material to his impairment, in that the impairment would in all likelihood continue if the substance abuse was ended. The requirements of the Code of Federal Regulations have been considered as to this issue.

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 Bridges Eligibility Manual (BEM) 261 (2012). 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 disability: 1990.

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 July 19, 2012 MA application and retroactive application, to determine if all nonmedical eligibility criteria for MA benefits have been met. The onset date of Claimant's disability is 1990.
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 any 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 September, 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: August 7, 2013

Date Mailed: August 8, 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]