

**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 50219
Issue No.: 2009, 4031
Case No.: ██████████
Hearing Date: November 13, 2013
Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 13, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant, and the Claimant's Authorized Hearing Representative, ██████████, who appeared on his behalf. Participants on behalf of the Department of Human Services (Department) included ██████████, Assistance Payments Supervisor.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 4, 2013 the Claimant submitted an application for public assistance seeking MA-P and SDA. The Claimant also submitted a retro MA-P application) December 2012).

impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

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) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a) (4) (i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a) (b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

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)

In the present case, the Claimant alleges disability based on mental disabling impairments, Asperger's Syndrome, anxiety, obsessive-compulsive disorder, and depression.

The Claimant has alleged no physical disabling impairments.

A summary of the Claimant's medical evidence follows.

A Mental Residual Functional Capacity Assessment was completed on [REDACTED] by the Claimant's treating social worker and treating psychiatrist. The Claimant was evaluated as markedly limited in the following abilities: the ability to understand and remember detailed instructions, the ability to carry out detailed instructions, the ability to perform activities within the schedule, maintain regular attendance and be punctual within customary tolerances, the ability to accept instructions and respond appropriately to criticism from supervisors, the ability to travel in unfamiliar places or use public transportation, the ability to set realistic goals or make plans independently. The report further noted the following quote, "[REDACTED] is not able to work in various settings due to his Obsessive Compulsive Disorder symptoms. He also has Asperger like presentation and thought processing difficulties."

The report further noted that the Claimant was unable to manage his benefit funds. As regards Sustained Concentration and Persistence, the Claimant was also moderately limited in his ability to maintain an ordinary routine without supervision, the ability to work in coordination with or proximity to others without being distracted by them, in his ability to maintain attention and concentration for extended periods, and the ability to make simple work-related decisions. Also noteworthy, the Claimant was moderately limited in social interaction in his ability to interact appropriately with the general public, ask simple questions, get along with co-workers or peers without distracting them or exhibiting behavioral extremes and maintaining socially appropriate behavior and adhering to basic standards of neatness and cleanliness.

As Regards Understanding and Memory the Claimant was moderately limited in his ability to remember locations and work-like procedures and his ability to understand and remember one or two step directions. Lastly the report notes that the Claimant treats with his doctors at least once per month.

A Psychiatric Examination Report was also prepared which noted at the examination the Claimant exhibited limited insight and poor judgment. While the Claimant was dressed appropriately, the report notes he was easily irritated. The report noted he was unable to hold jobs due to his pervasive development disorders. Current treatment noted that Claimant would benefit from continued individual therapy and needs ways to manage his temper. At the mental status examination the Claimant's mood was noted as anxious. Claimant was exhibiting childish mannerisms, gets easily irritable, short of temper, and aggressive behavior towards his mother. In October the police were called due to the Claimant's behavior. As regards daily functioning, the report notes that Claimant has a long-standing history of compulsive behaviors which causes him to take 4 to 5 hours to take showers and complete toileting himself. The diagnosis was Obsessive-Compulsive Disorder, Pervasive Development Disorder, and Asperger's Syndrome Disorder. The GAF score was 50, five points lower than the previous year.

The social summary completed by the Department indicated that the caseworker had only been in contact with Claimant's mother because the Claimant did not communicate well. The Claimant has been prescribed Celexa, Buspar, Lexapro, Zoloft, Adderall, Prozac, Seroquel and Luvox. On the DHS 49 G the following statement is included in the Claimant's handwriting, "My only illness is OCD and anxiety and depression NOT Asperger's Syndrome. This is not an illness regardless of what you or society thinks."

As early as the fourth grade the Claimant's psychological evaluation noted at that time that the Claimant's unique set of thinking and reasoning abilities make his overall intellectual functioning difficult to summarize, making his full scale IQ to not be considered a good estimate of his overall functioning. In summary the report concluded that he had difficulty sustaining mental effort on academic tasks, problems with initiating and sustaining concentration and was often disorganized. He exhibited attention deficit hyperactivity disorder, inattentive type, and was qualified to receive special education services. A further psychological report completed in [REDACTED] concludes that the Claimant could be certified as Emotionally Disabled because of his depression or as a Learning Disabled individual because of his processing difficulties and his inability to perform academically in a variety of areas. At that time the evaluator saw the situation as extremely serious, also noting that the relationship between the Claimant and his father was at breaking point. The report further notes the Claimant's depression was very serious and needed treatment.

A school evaluation completed in [REDACTED] noted that the Claimant exhibits poor social and peer communication skills and prefers to be alone. He has sensory issues with noise and is a concrete thinker lacking in imaginative thoughts. The Claimant's voice was described as monotone with very few expressions, with no significant delay in language. However Claimant showed impairment in social reciprocity and difficulty in reading social clues with restricted range of interests and activities.

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 objective medical evidence establishing that he does have some mental limitations on his ability to perform basic work activities. Accordingly, 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; 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 asserts mental disabling impairments due to Asperger's Syndrome, anxiety, depression and Obsessive Compulsive Disorder.

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for this disorder is met when the requirements of 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

- d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractability; 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 on 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;

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

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 both A and C are satisfied.

- A. Medically documented findings of at least one of the following:
- 1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
 - 2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

In this case, the record reveals ongoing treatment for depression, anxiety and Obsessive Compulsive Disorder with a further diagnosis of Asperger's Syndrome. The Claimant credibly testified that he suffers from extreme anxiety most of the time in particularly in work situations coupled with his obsessive-compulsive disorder. The Claimant described in detail his difficulty maintaining employment particularly because of his obsessive-compulsive disorder causing him to have difficulty processing and keeping up with the pace of work, difficulty dealing with unclean environments, and difficulty overall getting along with individuals in the workplace. Claimant's testimony was substantiated by the evaluation of his treating psychiatrist. The Claimant's records including medical records have established a lifelong difficulty with both learning and ability to function in an educational setting. Additionally at the hearing the Claimant presented as extremely anxious and nervous and had difficulty at times controlling his impulses with regard to the numerous questions he was asked. Noteworthy is that the Claimant did not feel comfortable completing intelligence testing suggested by the undersigned. The Claimant testified that he does take a long time to get ready and currently his schedule is such that he does not go to sleep until 4:30 AM which would obviously make it extremely difficult for him to maintain any normal work schedule. As

regards impulse control the Claimant did admit that he had grabbed his father by the shirt and had punched him in the arm. The Claimant did not deny that he does have anger issues and impulse control problems.

Reference must also be made to the mental residual functional capacity assessment which in key categories demonstrated Claimant's marked difficulties in the workplace. Additionally, the Claimant's parents testified credibly that he often takes hours to prepare himself in the morning to attend to various activities such as showering and had great difficulty reporting for work on time as well as forgets his personal grooming at times. This fact is also confirmed by the comments made by the Claimant's treating physician noting the Claimant takes between four and five hours to shower and toilet himself. The overall picture for the Claimant is such that even though at times his verbal expression is extremely appropriate it can also be inappropriate as exhibited by his testimony provided at the hearing. The Claimant's GAF Score was 50 and notwithstanding treatment was lower than the previous year. Lastly, consideration was given to the numerous categories where the Claimant was moderately limited noting that his examiner believed the Claimant's capacity to perform the activity was impaired.

Overall, based on the testimony of the Claimant, the independent medical evidence presented and the testimony of Claimant's parents, it is determined that the Claimant has met the Listing 12.06 or its equivalent. It is determined that the Claimant exhibited recurrent obsessions or compulsions which are a source of marked distress and resulted in marked restrictions in three of the four categories including activities of daily living; maintaining social functioning, maintaining concentration, persistence or pace.

The records and evaluations of the Claimant indicate that the Claimant will need continuing treatment.

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 which fluctuates but on average is low. 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),

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 12.06 A 4, and B, Anxiety Related Disorders. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled not disabled for purposes of the MA-P and/or SDA benefit program.

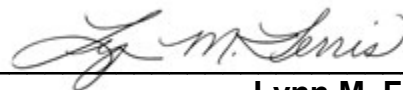
Accordingly, the Department's determination is AFFIRMED REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the March 4, 2013 application for MA-P and retro MA-P (December 2012) and SDA to determine the Claimant's eligibility and 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 issue an SDA supplement to the Claimant if otherwise eligible in accordance with Department policy.

4. The Department shall review the Claimant's continued eligibility in December 2014 in accordance with Department policy.



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

Date Signed: December 6, 2013

Date Mailed: December 6, 2013

NOTICE OF APPEAL: 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.

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).

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

2013-50219/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]
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