

**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.: 2013-10376
Issue No.: 2009
Case No.: ██████████
Hearing Date: February 14, 2013
Wayne County DHS (18)

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 telephone hearing was held in Detroit, Michigan on February 14, 2013. The Claimant appeared and testified. The Claimant's Authorized Hearing Representative, ██████████ ██████████ also appeared on Claimant's behalf. Participating on behalf of the Department of Human Services ("Department") was ██████████ Medical Contact Worker.

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 28, 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, on January 1, 2012 with retro MA-P for December 2011.

2. On August 8, 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 31, 2012, the Department received the Claimant’s timely written request for hearing.
5. On January 11, 2013, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged any mental disabling impairment(s) due to schizo-affective disorder, depression and anxiety and bipolar disorder.
7. The Claimant alleged physical disabling impairments due to chronic low back pain, left knee injury with pain, carpal tunnel syndrome in hands and wrists and hepatitis C.
8. At the time of hearing, the Claimant was ■ years old with an ■ birth date; the Claimant is now ■ The Claimant was 5’6” in height; and weighed approximately 140 pounds.
9. The Claimant completed his education to the 11th grade and obtained a GED. The Claimant’s employment history is working in an auto manufacturing plant as an assembly line worker and paint and body shop worker.
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 alleged mental disabling impairment(s) due to schizoaffective disorder, depression and anxiety and bipolar disorder.

The Claimant alleged physical disabling impairments due to chronic low back pain, left knee injury with pain, carpal tunnel syndrome in hands and wrists, and hepatitis C.

A summary of the medical evidence presented follows.

On [REDACTED] the Claimant's treating psychiatrist completed a Mental Residual Functional Capacity Assessment and noted that the Claimant was markedly limited in

the following categories: Understanding and memory, inability to remember locations and work-like procedures, and understand and remember detailed instructions. In sustained concentration the Claimant was markedly limited in his ability to carry out detailed instructions, maintain attention and concentration for extended periods and to work in coordination with or proximity to others without being distracted by them and to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Under Social Interaction the Claimant was markedly limited in his ability to accept instructions and respond appropriately to criticism from supervisors, and to get along with co-workers or peers without distracting them or exhibiting extremes. Under Adaption the Claimant was moderately limited in all abilities and thus was impaired in his ability to perform..

The Claimant was admitted to inpatient psychiatric care on [REDACTED] for a twelve day period. The Claimant was petitioned by his mother. The Claimant was also given detoxification for phenobarbital. The Claimant was very confused from time to time during his stay. The Claimant was also on suicide watch. At discharge the diagnosis was schizoaffective disorder and benzodiazepine abuse with GAF of 20 and notes lack of insight and judgment and chronic mental illness. At the time of discharge the Claimant's prognosis was guarded. Diagnosis on discharge was schizoaffective disorder and benzodiazepine abuse with GAF of 42.

On [REDACTED] the Claimant presented to the hospital with a request for a psychiatric assessment due to anxiety and stating he could not think straight and presented with suicidal thoughts. The Claimant was admitted and continued with thoughts of suicide and wanted to jump off a bridge so that no one would find his body.

On [REDACTED] the Claimant again presented to the Emergency Department with back pain due to a fall with left palmar hand pain and left anterior knee pain. The Claimant was discharged after being checked out.

The Claimant is treated psychiatrically. In [REDACTED] at a medication review the Claimant was diagnosed as depressed with anxiety. The Claimant was prescribed Xanax for anxiety. The Claimant's diagnosis was schizoaffective disorder and anxiety disorder. The review notes indicate that Claimant was hospitalized for inpatient psychiatric treatment from [REDACTED].

The Claimant after admission to the hospital was transferred to an inpatient mental health facility. Claimant was admitted to [REDACTED] on [REDACTED] and was discharged [REDACTED]. At the time Claimant was admitted due to mental breakdown. The Claimant had attempted to burn himself with a lighter and poured hot coffee on himself while in jail due to unpaid traffic tickets. The report notes a history of

two prior inpatient psychiatric admissions. Throughout much of his hospitalization the Claimant continued to have suicidal ideation. The Claimant's prognosis on discharge was guarded. The diagnosis was bipolar mixed with psychotic features, the GAF was 30 on admission and 42 on discharge.

The Claimant was seen at the hospital on [REDACTED] with a chief complaint of anxiety. The Claimant left the emergency department after being refused pain medication and was advised to follow up with his psychiatrist.

On [REDACTED] the Claimant's treatment plan noted intervention for suicidal ideation and mental break.

A consultative psych exam was completed in [REDACTED] that gave a diagnosis of major depressive disorder with psychotic features, and GAF of 45, with prognosis guarded. The exam noted that due to his depression with psychomotor retardation and anxiety, he is restricted to work that involves brief and superficial interactions with co-workers, supervisors and public.

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 schizoaffective disorder, bipolar mixed type with psychosis and Major Depressive Disorder and Anxiety. Accordingly, listing 12.03 and 12.04 are reviewed and considered.

Listing 12.04 Affective Disorders 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 are 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:
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;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

The medical records presented show ongoing treatment with two inpatient hospitalizations and extended duration of illness. The Claimant's treating psychiatrist has evaluated the Claimant and found him markedly limited such that he cannot be expected to participate in substantial gainful employment and finds Claimant markedly limited in Understanding and Memory, Sustained Concentration and Persistence, Social

Interaction as set forth in detail above. Even though not as significant the consultative psychiatric exam also found and noted a diagnosis of major depressive disorder with psychotic features, and GAF of 45, with prognosis guarded. The exam noted that due to his depression with psychomotor retardation and anxiety, he is restricted to work that involves brief and superficial interactions with co-workers, supervisors and public.

At the hearing the Claimant credibly testified to having daily anxiety attacks and feelings of hopelessness, occasionally hears voices, a history of self-mutilations when experiencing extreme anger, a weight loss of 15 pounds between June and December 2012 due to loss of appetite, and limited social interactions with his family only and with no friends. Thus it is determined that the Claimant has demonstrated that his medical impairment meets or is the medical equivalent of listing 12.04 .A with characteristic of 1, Manic Syndrome, 2. Depressive Syndrome and 3. Bipolar Syndrome and B 1- 4.

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 low GAF score of 42 since the inception and during treatment. 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). Additionally consideration was given to whether drug addiction was material and it was found not material as the Claimant's symptoms have existed for an extended period and he has required repeated inpatient treatment for his mental impairments which persist and are the primary diagnosis apart from drug addiction to prescription medications.

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 12.04. 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.

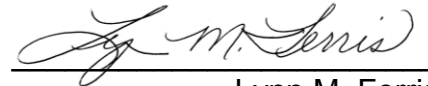
DECISION AND ORDER

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.

2013-10376/LMF

Accordingly, It is ORDERED:

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



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

Date Signed: August 2, 2013

Date Mailed: August 2, 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

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LMF/cl

cc:

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