

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-32994
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 12, 2013
County: Wayne DHS (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on June 12, 2013, from Taylor, Michigan. Participants included the above-named Claimant, [REDACTED] of L&S Associates testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included Maia Elvine-Fair, Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

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 [REDACTED]/12, Claimant applied for MA benefits (see Exhibits 41-62), including retroactive MA benefits from [REDACTED]/2012 (see Exhibits 63-64).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).

4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 33-34) informing Claimant of the denial.
5. On [REDACTED]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 36).
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant does not have a severe impairment expected to last 12 months or longer.
7. On [REDACTED]/13, an administrative hearing was held.
8. On [REDACTED]/13, an Interim Order Extending the Record was issued, allowing Claimant and DHS 60 days from the date of hearing to present evidence of Claimant's Social Security Administration application status and drug treatment records.
9. On [REDACTED]/13, Claimant presented new medical documents (Exhibits A1-A7, B1-B21, C1-C8 and D1-D48).
10. On [REDACTED]/13, the new medical documents were forwarded to SHRT.
11. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00 and/or the materiality of drug and alcohol abuse.
12. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'4" and weight of 130 pounds.
13. Claimant is an ongoing tobacco smoker with a relevant history of substance abuse.
14. Claimant's highest education year completed was 12th grade, via general equivalency degree.
15. As of the date of the administrative hearing, Claimant had no medical coverage.
16. Claimant alleged disability based on impairments and issues including a closed head injury, headaches, anxiety, vision loss, depression and other psychological problems.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to

1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process, which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 income limit is \$1010/month.

Claimant denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)

- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v. Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CF R 416.920 (5)(c). In determining whether Claimant's impairment amounts to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

DHS presented hospital documents (Exhibits 15-32) from an admission dated [REDACTED]/12. It was noted that Claimant presented following an intentional prescription drug overdose. It was noted that Claimant felt depressed from her spouse's recent passing. It was noted that Claimant attempted suicide in the past. It was noted that Claimant was a two pack per day cigarette smoker and regular marijuana user. It was noted that Claimant's home medications included Serenol and methadone. A Consultation (see Exhibit 15) noted the following diagnoses: intentional drug overdose, asymptomatic sinus bradycardia, atelectasis with a longstanding history of tobacco abuse and bipolar disorder. Discharge documents were not included but presented documentation verified treatment as late as [REDACTED] 0/12.

Hospital documents (Exhibits D32-D48) from a psychiatric admission dated [REDACTED]/12 were presented. A diagnosis of depression was noted. Claimant's GAF at discharge was 55. It was noted that Claimant's prognosis was poor due to lack of insight into the need for substance abuse treatment. A discharge date of [REDACTED]/12 was noted. It was noted that Claimant was given an appointment to a community care center.

Hospital documents (Exhibits B1-B21) from an admission dated [REDACTED]/13 were presented. It was noted that Claimant was referred from crisis center with symptoms of benzodiazepine withdrawal on [REDACTED]/13. It was noted that one day earlier, Claimant ingested 20 sleeping pills. A diagnosis of depression was noted. On [REDACTED] 13, Claimant's GAF was noted as 20. It was noted that Claimant was discharged on [REDACTED]/13.

DHS presented hospital documents (Exhibits 67-75) from a voluntary admission dated [REDACTED]/13. It was noted that Claimant presented following an overdose of pills. A diagnosis of major depressive disorder was noted. Claimant's GAF was noted at 30-35 at the time of discharge. It was noted that Claimant was seen ambulating the corridors and appeared to be stable and in no acute distress. It was noted that Claimant was a benzodiazepine and opiate user. A history of sexual abuse by Claimant's father was noted. It was noted that a meter dose inhaler was needed for symptom control of emphysema, though there was no exacerbation at the time of examination; follow-up was recommended. It was noted that Claimant had chronic lower back pain; a plan to follow-up with orthopedics and/or neurology was noted. It was noted that abstinence from substance use was advised. It was noted that Claimant was discharged on [REDACTED]/13.

Discharge summary documents (Exhibits 76-77) from an admission dated [REDACTED]/13 were presented. It was noted that Claimant was brought from the behavioral center with suicidal ideation and major depressive disorder. It was noted that Claimant was diagnosed with ileus and responded well to treatment. It was noted that Claimant was stable and satisfactory to be discharged back to the extended care facility. A date of discharge was not noted but the summary was noted as authored on [REDACTED]/13.

Hospital documents (Exhibits D17-D31) from a voluntary admission dated [REDACTED]/13. It was noted that Claimant presented with complaints of hearing voices. It was noted that a drug screening showed that Claimant was positive for cocaine and opiates. It was noted that Claimant had many similar prior presentations related mostly to use of cocaine, THC and ETOH. It was noted that Claimant was manipulative, defensive and evasive during an initial psychological evaluation. It was noted that Claimant denied alcohol or drug abuse. A discharge date of [REDACTED]/13 was noted. Claimant's GAF was noted as 55 at discharge. Discharge instructions included a follow-up appointment.

Hospital documents (Exhibits A1-A7) from an admission dated [REDACTED]/13 were presented. It was noted that Claimant was brought after respiratory failure following an overdose of Seroquel. It was noted that Claimant was intubated and taken to ICU. It was noted that Claimant reported feeling better. It was noted that Claimant was psychologically evaluated and deemed to be in no imminent danger. It was noted that Claimant needs to follow-up on outpatient basis.

Hospital documents (Exhibits C1-C8) from an encounter dated [REDACTED]/13. It was noted that Claimant took an overdose of Seroquel and complained of pain and dyspnea. It was noted that Claimant reported depression from losing her house and car. A long history of suicide attempts was noted including four from the prior year. A complaint of

panic attacks was noted. It was noted that Claimant was admitted to the medical floor and placed on suicide watch.

Hospital documents (Exhibits D1-D16) from an admission dated [REDACTED]/13. It was noted that Claimant was transferred to the hospital from a medical floor after Claimant took Seroquel as a come down after using crack for a few days. A discharge date of [REDACTED]/13 was noted. It was noted that a follow-up after care appointment was scheduled for Claimant.

Claimant testified that she entered in-patient drug rehabilitation on [REDACTED]/13. Claimant testified that the program was expected to last 28 days.

Claimant alleged disability, in part, based on vision losses. Claimant failed to present any medical records to support impairments related to vision loss.

Claimant alleged disability, in part, based on headaches and chronic back pain. The presented medical records occasionally referenced headaches and back pain as complaints. There was no evidence that Claimant ever sought treatment specifically for headaches and back pain. It is plausible that Claimant's repeated suicide attempts were related to the pain she suffered but the evidence is not supportive of such speculation.

Claimant's only established basis for disability was depression. Claimant testified that she has several psychological symptoms: nervousness, anxiety, panic attacks, racing heart, shaking and forgetfulness. Claimant stated that she lost 20 pounds since 1/2013 due to stress. She stated that she thinks about suicide daily. Given Claimant's lengthy record of suicide attempts, it is reasonable to presume that Claimant has impairments to performing work activities due to depression.

Claimant seeks a finding of disability from [REDACTED]/2012. The presented evidence established that Claimant was hospitalized in [REDACTED]/2012 and multiple times since. The evidence established a basis for disability since [REDACTED]/2012.

The 12-month durational requirement for step two is questionably met. On one hand, depression that is so severe that it leads to multiple suicide attempts is suggestive of a 12-month disability. On the other hand, Claimant's drug use was cited as a factor in some of the hospitalizations. At this point in the analysis, it will be presumed that Claimant's impairments will last 12 months, while the materiality of drug use will be reserved for a later point in the analysis.

Based on the presented evidence, it is found that Claimant established a severe impairment expected to last for 12 months or longer. Accordingly, the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed

and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be depression. Depression is covered by the SSA listing for affective disorders which reads:

12.04 Affective disorders : Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - 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 presented medical records established that Claimant suffers various depression symptoms including: anhedonia, difficulty sleeping, suicidal ideation and feelings of worthlessness. It is found that Claimant meets Part A of the listing for affective disorders.

Turning to Part C, Claimant's records established a history of problems that extend beyond [REDACTED]/2012. Claimant established suffering a chronic affective disorder for at least two years.

For purposes of this decision, it will be presumed that Claimant's regular hospitalizations related to suicide attempts cause more than a minimal limitation to perform basic work activities. It will also be found that symptoms and signs are attenuated by medication or support, despite an absence of documentary evidence that Claimant attempted treatment. The only other relevant listing required is whether Claimant's repeated hospitalizations qualify as repeated episodes of decompensation, each of extended duration.

Within the mental disorder listings prologue, "repeated episodes of decompensation, each of extended duration" is defined as three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks. SSA further states that if a claimant experiences more frequent episodes of shorter duration or less frequent episodes of longer duration, SSA will use judgment to determine if the duration and functional effects of the episodes are of equal severity and may be used to substitute for the listed finding in a determination of equivalence.

It was difficult to discern whether Claimant presented evidence of three episodes of decompensation or more. For example, four sets of documents from [REDACTED]/2013 were presented. The presented records were close together in date but seemed to suggest

that Claimant attempted suicide on three different occasions within a two week period; the documents may have instead intended to refer to a single suicide attempt.

Even finding that Claimant only made three suicide attempts in the prior year, Claimant's long history of suicide attempts was well documented. This is deemed sufficient to meet the above listing despite none of the hospitalizations lasting for 14 days or longer. Based on the presented evidence, it is found that Claimant meets the listing for affective disorders.

Typically, meeting a SSA listing results in a conclusive finding of disability. When alcohol and/or drug abuse is relevant to an impairment then an additional analysis must be performed. SSA provides guidance on disability findings that may be impacted by substance abuse. Social Security Rule 82-60 states:

Where the definition of disability is met in a title XVI claim, and there is evidence of drug addiction or alcoholism, a determination must also be made as to whether the drug addiction or alcoholism was a factor material to the finding of disability for purposes of applying the treatment and representative payee provisions. In making this decision the key issue is whether the individual would continue to meet the definition of disability even if drug and/or alcohol use were to stop. If he or she would still meet the definition, drug addiction or alcoholism is not material to the finding of disability and the treatment and representative payee provisions do not apply. The drug addiction and alcoholism requirements are imposed only where (1) the individual's impairment(s) is found disabling and drug addiction and/or alcoholism is a contributing factor material to the determination of disability, and (2) the same impairment(s) would no longer be found disabling if the individual's drug addiction or alcoholism were eliminated, as, for example, through rehabilitation treatment.

Physician statements were presented which implied that Claimant's high stress was the impetus for at least one suicide attempt. A hospital physician noted on [REDACTED]/12 that Claimant's stress needs to be "aggressively treated". Subsequent hospital documents noted that loss of house and car were stressors in a suicide attempt. It was also clear that the loss of Claimant's spouse was a factor in her depression. This evidence was suggestive that Claimant's problems are not just drug-related.

Two of Claimant's documented suicide attempts ([REDACTED]/13 and [REDACTED]/13) verified drug use by Claimant prior to hospitalization. Hospital documentation also implied there were other hospitalizations involving drug use. During the [REDACTED]/13 hospitalization, it was noted that Claimant was known to the service from many prior presentations related mostly to use of cocaine (see Exhibit D13). This evidence is strongly suggestive that drug addiction is the primary cause of Claimant's suicide attempts and depression.


Claimant's failure to attempt drug rehabilitation until three weeks prior to the hearing does not bolster the claim of disability. As the evidence was presented, Claimant failed to show a period of drug-free behavior.

Claimant's lack of any other kind of treatment is also concerning. No psychiatric documentation was presented. It would be expected that someone with a history of suicide attempts would pursue some form of counseling and/or therapy.

Based on the presented evidence, it is found that Claimant is not disabled because of the materiality of drug usage. Accordingly, it is found that DHS properly denied Claimant's MA benefit application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated [REDACTED]/12 based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 10/31/2013

Date Mailed: 10/31/2013

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

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

CG/hw

cc:

