

**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 42737
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: October 23, 2013
County: Wayne (55)

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 October 23, 2013 from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████, Claimant's Case Manager, also appeared as Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included ██████████, ES.

ISSUE

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

FINDINGS OF FACT

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

1. On January 14, 2013 the Claimant applied for MA-P and State Disability Assistance, ("SDA").
2. On February 14, 2013, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated February 25, 2013 denying the Claimant's MA-P application and SDA. Exhibit 1

4. On April 18, 2013 the Claimant's AHR submitted to the Department a timely hearing request.
5. On July 22, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was entered on October 24, 2013 requesting the Claimant's AHR to obtain an updated DHS 49 D and E and a DHS 49 was also to be obtained. The DHS 49 from Dr. Campbell was not received. It was to be obtained by the Department with the assistance of the AHR.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on December 18, 2013 and the SHRT denied disability on February 14, 2014.
8. Claimant at the time of the hearing was [REDACTED] years old with a birth date of [REDACTED], [REDACTED] Claimant's height was 5'9" and weighed 235 pounds.
9. Claimant completed the equivalent of a high school education and possesses a GED.
10. Claimant has employment experience last worked [REDACTED] The Claimant worked in landscaping lifting up to 50 pounds and was fired because of his work performance and could not get along with his supervisor. The Claimant also worked in a warehouse as a shipping and receiving clerk lifting heavier weight 50 to 100 pounds on occasion. The Claimant had difficulty recalling other prior work.
11. Claimant alleges physical disabling impairments due to COPD, chronic back pain hypertension, with arthritis in back and knees. The Claimant ambulated with a cane.
12. Claimant has alleged mental disabling impairments due to depression and has been diagnosed with Psychosis, Mood Disorder, rule out Personality Disorder. The Claimant also has hallucinations and hears voices.
13. Claimant's impairments have lasted or are expected to last for 12 months' duration or more.

CONCLUSIONS OF LAW

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P 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 Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are

evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is “substantial gainful activity” (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Claimant alleges physical disabling impairments due to COPD, chronic back pain, hypertension, with arthritis in back and knees. The Claimant ambulated with a cane.

Claimant has alleged mental disabling impairments due to depression and has been diagnosed with Psychosis, Mood Disorder, rule out Personality Disorder. The Claimant also has hallucinations and hears voices.

A summary of the Claimant's medical evidence presented at the hearing follows.

The Claimant was admitted for a one day stay on [REDACTED] due to back pain, noted chronic heart failure and shortness of breath. The Claimant presented also with acute cough and wheezing. A stress echocardiogram was performed and target heart rate was achieved and was negative for ischemia and ejection fraction visual estimation was 60 to 65%. The Claimant was prescribed pain medication and albuterol inhaler for shortness of breath and released.

On [REDACTED] the Claimant visited the emergency room due to knee pain and again was given pain medication for osteoarthritis.

A Psychiatric Evaluation and Mental Status Exam were performed on [REDACTED] by the Claimant's Psychiatrist. The Claimant presented without acute distress, speech clear and coherent, thinking clear and goal directed affect was shallow. Patient admitted to hearing voices and also seeing things and being moody but was not psychotic. Insight limited. The Diagnosis was Psychosis, Mood Disorder, rule out Personality Disorder, History of stroke, hypertension, COPD and kidney problems. GAF was 55. Diagnosis was guarded.

The Claimant's therapist also wrote a letter offering his assessment of Claimant's current mental health condition and diagnosis on [REDACTED]. The report notes medications were prescribed to combat the client's hearing voices, paranoia, depression and mood swings. At the time of the letter the client was evaluated as experiencing a great deal of emotion such as sadness, loss of interest, guilt, hopelessness, anxiety, irritability and poor concentration accompanied with hallucinations. The report noted that client could become exceedingly paranoid under extreme conditions to combat the overwhelming mental and emotional trauma he suffers as a result of his social stressors.

A Medical Examination Report was completed on [REDACTED]. The diagnosis was psychosis accompanied by mood disorder. Limitations were imposed and condition was deteriorating. The Claimant could lift occasionally 10 pounds, was limited to standing or walking less than 2 hours in an 8 hour work day and sitting less than 6 hours in an 8 hour work day. The Claimant was unable to reach with either hand or operate foot controls with either foot. A cane was deemed necessary due to Claimant's arthritis to assist him in walking. The medical findings were based on [REDACTED] medical documentation regarding physical impairments. The Claimant was able to meet his needs in the home.

The Claimant's treating Psychiatrist completed a DHS 49 E Mental Residual Functional Capacity Assessment on [REDACTED] which assessed the Claimant as markedly limited in Understanding and Memory all categories; Sustained Concentration and Persistence, ability to carry out simple one/two-step instructions, ability to maintain regular attendance and be punctual, ability to sustain an ordinary routine without supervision, and ability to work in coordination with or proximity to others without being distracted by them, and ability to complete a normal workday and work sheet without interruptions from psychologically based symptoms and perform at consistent pace without unreasonable number and length of rest periods. Social Interaction, Claimant was markedly limited in ability to interact appropriately with general public, ability to accept instructions and criticism from supervisors, ability to get along with co-workers or peers without disturbing them or exhibiting extreme behavior. Adaptation, Claimant was markedly limited in ability to set realistic goals and make plans independently, or respond appropriately to change in the work setting. The Claimant has been seen monthly for a year by his psychiatrist for medical review and was evaluated at the time of the exam.

In [REDACTED] the Claimant was seen for a therapy session which noted he was attempting to get housing, expressed nightmares due to medications and reported still hearing voices.

Here, Claimant has satisfied requirements as set forth in Steps one, and two, as Claimant is not employed and has demonstrated impairments which have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the medical evidence the Claimant's impairments do meet a listing as set forth in Appendix 1, 20 CFR 416.926. Listing 12.04 Affective Disorders, (Depression) was reviewed and it is determined that the listing was met as set forth below.

Listing 12.04 requires mood disturbance accompanied by full or partial manic or depressive syndrome, the required level of severity is met when both 12.04 A and B requirements are satisfied. Claimant was noted to have sleep disturbance, decreased energy, feelings of worthlessness, difficulty concentrating or thinking, and hallucinations which demonstrate that Part ! of 12.04 is met. . The Claimant's Case Manager noted and testified to an episode he personally observed where Claimant was at the treatment facility and was talking to himself, hearing voices and created some disturbance in the lobby. The Claimant has consistently treated for over a year under the supervision of a psychiatrist and participates in group therapy one time a week and sees a therapist once a month. The Claimant's Case Manager credibly testified to his observations of the Claimant and described Claimant as very temperamental and engages in altercations due to limitations on his social skills and can be hostile at times. The Claimant credibly testified that he isolates himself and has expressed fear of being robbed and that his fears are real. These symptoms, coupled with his treating psychiatrist's mental residual functional capacity assessment finding the Claimant

markedly limited as referenced above, satisfies the requirements of 12.04 B. Marked limitations were delineated for difficulties maintaining concentration, persistence and pace, and in all categories for Understanding and Memory which include ability to remember locations and work-like procedure, to understand and remember one, two step instructions and ability to understand detailed instructions. The evaluations and medical opinions 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. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing and evaluations and clinical observations of the Claimant's treating psychiatrist. Given the numerous and significant marked limitations, it is determined that medical evidence of record substantiates that the Claimant would be unable to sustain substantial gainful employment and has substantiated that the Listing 12.04 is met. In light of the finding that Claimant has satisfied the requirements of Listing 12.04 A and B, it is determined that the Claimant is found disabled at Step 3 with no further analysis required.

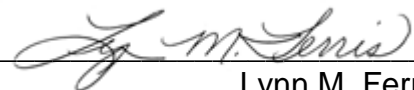
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

Accordingly, the Department's determination is 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:

1. The Department is ORDERED to initiate a review of the application dated January 14, 2013 for MA-P and SDA if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for March 2015.



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

Date Signed: March 14, 2014

Date Mailed: March 14, 2014

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

LMF/cl

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