

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-45548
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 28, 2013
County: Wayne (35)

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 August 28, 2013, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] Specialist.

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, including retroactive MA benefits from [REDACTED]/2012 (see Exhibits 44-45).
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).

4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 53-54) informing Claimant of the denial.
5. On [REDACTED]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 204.00.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A216) at the hearing.
9. Claimant waived the right to a timely decision to allow for the admission of new documents and for an updated determination by SHRT.
10. On [REDACTED]/13, an updated hearing packet was forwarded to SHRT.
11. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.
12. On 1 [REDACTED]/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
13. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old male with a height of 6'2" and weight of 230 pounds.
14. Claimant has a relevant history of alcohol and illegal substance abuse.
15. Claimant's highest education year completed was the 8th grade.
16. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient.
17. Claimant alleged disability based on impairments and issues including right knee arthritis, pancreatitis, anxiety, depression and hallucinations.

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 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).

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 monthly income limit considered SGA for non-blind individuals is \$1,010.

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 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

Hospital documents (Exhibits A137-A165) from an admission dated [REDACTED]/11 were presented. It was noted that Claimant presented with lower right abdominal pain. It was noted that Claimant had multiple kidney obstructions. It was noted that a ureteroscopy resolved the calculi obstructions.

A psychiatric evaluation (Exhibits 14-16) dated [REDACTED]/11 from a mental health treatment center was presented. It was noted that Claimant sought mental health treatment because he did not want to hear voices. It was noted that Claimant used drugs for the prior 1.5 years and abused alcohol and marijuana since Claimant was aged 15 years. Two previous hospitalizations related to psychological symptoms were noted. An Axis I diagnosis of alcohol induced persisting psychotic disorder was provided. Claimant's GAF was assessed to be 40.

Hospital documents (Exhibits A166-A184) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant presented with right-side lower abdominal pain. Noted impressions included nonobstructive calculi and anemia. The hospital course of action was not clear.

Hospital documents (Exhibits A185-A213) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant presented with right-side lower abdominal pain. It was noted that a CT scan was performed and "a few stones 5mm or smaller" were seen. A plan was noted of bowel rest with hydration.

Hospital documents (Exhibits A214-A216) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant presented with right-side lower abdominal pain. It was noted that an EGD was performed during a recent hospitalization and that Claimant was diagnosed with nephrolithiasis and duodenitis. It was noted that Claimant's pain was controlled and that radiology verified stability. It was noted that surgery was scheduled following discharge.

A Medication Review (Exhibits 55-58) dated [REDACTED]/12 was presented. The form was from Claimant's mental health treating health center. It was noted that Claimant is scheduled for biweekly Proloxin injections. It was noted that Claimant missed his last injection and was a month behind. It was noted that if Claimant misses his injection, he hears voices. It was noted that Claimant reported feeling better when he gets his injection of Proloxin. It was noted that Claimant's stomach hurt and that he would go to the hospital.

Hospital documents (Exhibits 17-41; A125-A136) from an admission dated [REDACTED] 12 were presented. It was noted that Claimant presented with complaints of right flank pain and vomiting. It was noted that Claimant appeared two days earlier and was given pain medication for a radiating pain which only worsened since discharge. It was noted that Claimant had a history recurrent kidney stones. A history of diverticulosis was noted. It was noted that a cystoscopy was performed and a stent was inserted in the right ureter. A discharge diagnosis of hydronephrosis secondary to obstructing uretral calculus was noted. Secondary diagnoses included an acute kidney injury, depression, anxiety, schizophrenia and HTN. It was noted that Claimant was discharged on [REDACTED]/12.

A Medical Assessment of Ability to Do Work Related Activities (Mental) Exhibits 59-60) from Claimant's treating psychiatrist was presented. The form was dated [REDACTED]/12. It was noted that Claimant had a one-year history with the psychiatrist. The form listed 20 work-related abilities and a choice of whether Claimant was "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation. Claimant was found markedly limited in all 20 listed abilities.

Various mental health treatment documents (Exhibits A1-A124) were presented. The documents were from 2012 and 2013. Generally, the documents verified ongoing participation by Claimant in treatment since at least [REDACTED]/2012. On [REDACTED]/12, it was noted that Claimant reported stopped taking drugs and alcohol "on his own". The documents consistently noted that Claimant's symptoms are reduced when he receives Proloxin tablets, though he still hears voices and still has a guarded prognosis. It was consistently noted that Claimant suffered from the following problems: hallucinations, paranoia, lack of hobbies, lack of social outlet. It was consistently noted that Claimant had normal concentration, normal hygiene, normal problem solving skills, normal following direction skills. It was consistently noted that Claimant demonstrated an inability to independently access needed services. It was noted that Claimant had difficulty sleeping (though improvement to 5-8 hours per night was noted), though this statement contradicted other statements which indicated that Claimant slept too much. It was consistently noted that Claimant had poverty of thought and speech.

The most recent mental health treatment document (Exhibits A123-A124 submitted was dated [REDACTED]/13. Claimant's physician noted that Claimant was showing relative improvement and somewhat less guarded and paranoid. It was noted that Claimant's affect was blunted. It was noted that Claimant stated that his Proloxin shots help a lot. It was noted that paranoia continues, as does Claimant's complaint of hearing voices. It was noted that medications were refilled and a follow-up appointment in two weeks was scheduled.

Claimant alleged disability, in part, based on psychological symptoms. The presented records verified that Claimant regularly attended bi-weekly mental health treatment since 2011. It was verified that Claimant suffers various degrees of symptoms including hallucinations and side effects from psychotropic medication. The presented evidence established that Claimant has significant basic work activity impairments that have lasted 12 months since [REDACTED]/2012, the first month when MA benefits are sought.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move 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 related to schizophrenic-related disorders. The listing for schizophrenic disorders is covered by Listing 12.03 and reads:

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

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 or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

- a. Blunt affect; or
- b. Flat affect; or
- c. Inappropriate affect; OR

4. Emotional withdrawal and/or isolation;

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 schizophrenic, paranoid, or other psychotic 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.

Claimant's mental health treatment history verified that Claimant regularly attended mental health therapy between [REDACTED]/2011 and at least through [REDACTED]/2013. The records verified that Claimant received medication and counseling. The treatment records verified that Claimant still suffers hallucinations despite ongoing treatment. Claimant meets Part A of the psychotic disorder listing.

Turning to Part B, a document listing 20 different basic work abilities was presented. Listed social functioning abilities included the following: interacting with the public, asking simple questions or requesting assistance, accepting instruction and responding appropriately to criticism, getting along with coworkers while not being a distraction and maintaining socially appropriate behavior. Listed concentration-related abilities included: carrying out simple instructions, maintaining attention and concentration for extended periods, sustaining an ordinary routine without supervision, making simple-work related decisions and completing a workday without psychological interruption. As noted above, Claimant's psychiatrist determined that Claimant was markedly restricted in every listed ability.

The same psychiatrist noted that Claimant demonstrated normal concentration, normal hygiene, normal problem solving skills and normal following direction skills. This evidence is suggestive of marked concentration or social restrictions.

Though there was a conflict between Claimant's psychiatrist's statements, more deference will be given to the assessment of mental abilities. Statements of normal

concentration and directional skills were representative of Claimant during a relatively short interview, not necessarily Claimant's overall ability.

Based on the presented evidence, Claimant meets the listing for psychotic disorders. Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA benefit application.

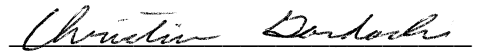
It should be noted that Claimant has an extensive drug and alcohol history that likely contributed to Claimant's psychotic disorders. A finding of materiality will not be made because the evidence established that Claimant ceased alcohol and drug use and still has psychological impairments.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED]/12, including retroactive MA benefits from [REDACTED]/2012;
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are **REVERSED**.


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

Date Signed: 12/2/2013

Date Mailed: 12/2/2013

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:

