

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

**IN THE MATTER OF:**

████████████████████  
████████████████████  
████████████████████

Reg. No.: 2013-45565  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: January 16, 2014  
County: Wayne (41)

**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 January 16, 2014, from Inkster, Michigan. Participants included the above-named Claimant. ██████████

████████████████████ Participants on behalf of the Department of Human Services (DHS) included ██████████  
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**ISSUE**

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason 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 12/13/12, Claimant applied for MA benefits, including retroactive MA benefits from 11/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 2/11/13 the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 8-9).

4. On 2/20/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 5/6/13, Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On 7/26/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.
7. On 1/16/14, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A56) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
11. On 1/17/14, an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.
12. On 3/27/14, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00
13. On 4/2/14, the Michigan Administrative Hearings System received the hearing packet, updated SHRT decision and additional records (Exhibits B1-B19).
14. As of the date of the administrative hearing, Claimant was a 37-year-old male with a height of 5'6" and weight of 140 pounds.
15. Claimant has a relevant history of substance abuse.
16. Claimant's highest education year completed was the 9<sup>th</sup> grade.
17. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since approximately 4/2013.
18. Claimant alleged disability based on impairments and issues including schizophrenia.

## 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. "Current" work activity is interpreted to include all time since the date of application. The 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 a summary of the relevant submitted medical documentation.

A Legacy Competency Assessment (Exhibits A40-A56) [REDACTED] was presented. The assessment was signed by a licensed master social worker. It was noted that Claimant reported difficulties with life in general. It was noted that Claimant felt like people were out to get him. It was noted that Claimant cannot "get a hold on life". It was noted that Claimant reported problems with anger. It was noted that Claimant reported homelessness since 1999. Recent suicidal ideation was noted. It was noted that Claimant experiences hallucinations, and has since he was 9 years old. It was noted that Claimant began alcohol usage at 4 years old and marijuana usage when he was 10 years old.

A Progress Note (Exhibits A38-A39) [REDACTED] from Claimant's treating mental health agency was presented. It was noted that Claimant attended group therapy.

A Psychiatric Progress Note (Exhibits A36-A37) [REDACTED] from Claimant's treating mental health facility was presented. It was noted that Claimant had no prior psychiatric hospitalizations. It was noted that the treating psychiatrist was short on time and had to reschedule an evaluation. No medications were noted as prescribed.

A Psychiatric Evaluation (Exhibits A31-A35) and Transfer/Discharge Summary (Exhibits A17-A19) from a treating mental health agency were presented. Both documents were [REDACTED]. It was noted that Claimant smoked marijuana daily and drank alcohol every other day. A psychiatrist diagnosed Claimant with bipolar disorder, cannabis dependence and alcohol dependence. Claimant's GAF was noted as 51.

Treatment Plan Meeting (Original Goals) (Exhibits A22-A35) [REDACTED] [REDACTED] was presented. The plan was noted as completed by Claimant and a therapist. Noted goals were that Claimant take medication on a daily basis and for Claimant to attend all scheduled appointments. Arrangements were noted for Claimant to obtain medications despite a lack of insurance. Other noted goals included the following: better depression coping mechanisms, reduce drug and alcohol usage, pursuit of housing programs, and pursuit of medical insurance.

A Psychiatric Progress Note (Exhibits A20-A21) [REDACTED] was presented. The note was from Claimant's treating mental health facility. It was noted that Claimant was a no-show for an unspecified appointment.

Hospital documents (Exhibits 22-29) from an encounter [REDACTED] were presented. It was noted that Claimant presented for an evaluation of competency. It was noted that Claimant complained of body aches, cough, and fever. A long history of schizophrenia was noted. It was noted that Claimant stopped taking medications one month prior because medication made him feel "foggy" and "funny". It was noted that Claimant's confusion improved shortly after admission. It was noted that Claimant was evaluated for infectious diseases but none were noted. An assessment of upper respiratory infection was noted.

A competency assessment (Exhibits A1-A16) [REDACTED] [REDACTED] was presented. The assessment was noted as completed by a licensed psychologist. It was noted that Claimant reported that he wanted to relapse from not taking his medications. It was noted that Claimant reported hearing voices and bells; it was also noted that Claimant saw ghosts that morning. It was noted that Claimant reported daily feelings of nervousness and worry. A low appetite was noted. It was noted that Claimant was homeless since 1999 though it was also noted that he lives with his best friend. It was noted that Claimant reported body aches and that he goes to a free clinic when he needs medical treatment. An Axis I diagnosis of schizoaffective disorder was noted. A substance abuse disorder of cannabis dependency was also noted. Claimant's GAF was noted to be 44.

Various treatment documents (Exhibits B1-B19) [REDACTED] were presented. The documents were completed by [REDACTED] medical staff. It was noted that

Claimant reported daily marijuana usage. It was noted that Claimant consumed alcohol on most days. Claimant's GAF was noted to be 60 on 6/11/13.

The medical evidence established that Claimant has a long history of schizophrenic symptoms. Treatment records established extremely concerning symptoms (e.g. hallucinations, paranoia and anger) and noted extremely concerning results (e.g. homelessness for several years). It is found that Claimant has significant impairments to perform basic work activities for a period longer than 12 months and 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 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.

The presented evidence established that Claimant has immense functioning difficulties. For purposes of this decision, it will be found that Claimant's functioning difficulties are sufficient to meet SSA listing requirements. However, considerations of drug use, alcohol use and compliance with therapy must also be considered.

Social Security Rule 82-60 states that an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled. SSA states that when drug or alcohol use is a medically determinable impairment, it must be determined whether the claimant would continue to be disabled if he or she stopped using drugs or alcohol; that is, SSA will determine whether DAA is "*material*" to the finding that the claimant is disabled. 20 CFR 404.1535 and 416.935.

Claimants have the burden of proof to establish disability. SSR 13-2p. When drug and/or alcohol abuse (DAA) is applicable, SSA applies the steps of the sequential evaluation a second time to determine whether the claimant would be disabled if he or she were not using drugs or alcohol. *Id.* It is a longstanding SSA policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. *Id.* Noted considerations made by SSA concerning drug materiality include the following:

- Does the claimant have DAA?
- Is the claimant disabled considering all impairments, including DAA?
- Is DAA the only impairment?
- Is the other impairment disabling by itself while the claimant is dependent upon or abusing drugs and/or alcohol?
- Does the DAA cause or affect the claimant's medically determinable impairments?
- Would the other impairments improve to the point of non-disability in the absence of DAA

It was established by Claimant's own reporting that he uses marijuana daily and regularly consumes alcohol. A Competency Assessment [REDACTED] noted that Claimant smoked 13-14 blunts per day for the purpose of calming himself. Common sense strongly suggests that chronic marijuana and alcohol use will exacerbate a

person with schizophrenic symptoms. Claimant's use was sufficient serious enough to justify two dependency diagnoses by a treating psychiatrist. Abstinence from drugs and alcohol was a noted goal developed by Claimant and a therapist.

It is problematic that Claimant failed to present any evidence of a period of abstinence from DAA. The failure by Claimant to abstain from DAA for any period does not definitive establish DAA materiality, however, DAA usage makes it more difficult for Claimant to establish that DAA is immaterial to a disability finding.

Claimant's lack of psychiatric hospitalization is evidence suggesting that Claimant's schizophrenia is not so overwhelming that medication compliance and DAA abstention would increase Claimant's functioning level. This is supportive in finding that DAA is material to a finding of disability.

Based on the presented evidence, it is probable that Claimant would not meet the psychotic disorder SSA listing if DAA was eliminated. Accordingly, the analysis may proceed to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant testified that he spent three years as a cab driver. Claimant also stated that he has past employment as a dishwasher. If Claimant performed these jobs in the past, there is little evidence to suggest that Claimant could not perform the same jobs now, minus DAA.

Presented records also suggested that Claimant is purposely noncompliant in taking medications. SSA also factors whether treatment noncompliance impacts a disability analysis.

SSA applicants must follow treatment prescribed by their physician in order to get benefits if the treatment can restore the ability to work. 20 C.F.R. 404.1530 (a). If the applicant does not follow the prescribed treatment without a good reason, SSA will not find the applicant disabled or, if already receiving benefits, SSA will stop paying benefits. 20 C.F.R. 404.1530 (b). Good reason may be factored into whether someone


refuses treatment. The following are examples of a good reason for not following treatment:

- (1) The specific medical treatment is contrary to the established teaching and tenets of an applicant's religion.
- (2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.
- (3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
- (4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky; or
- (5) The treatment involves amputation of an extremity, or a major part of an extremity.

Based on the presented evidence, it is found that Claimant is not disabled due to the materiality of DAA and Claimant's failure to follow prescribed treatment. Accordingly, it is found that DHS properly denied Claimant's MA 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 12/13/12, including retroactive MA benefits form 11/2012, 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: April 22, 2014

Date Mailed: April 22, 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

CG/hw

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