

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-9267
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: July 1, 2013
County: Wayne DHS (41)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on July 1, 2013, from Detroit, Michigan. Participants included the above-named claimant. [REDACTED], Claimant's son, testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly terminated Claimant's ongoing eligibility for Medical Assistance (MA) and State Disability Assistance (SDA) 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. Claimant was an ongoing MA and SDA benefit recipient.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED]/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibit 12).
4. On [REDACTED]/12, DHS terminated Claimant's eligibility for MA and SDA benefits, effective [REDACTED]/2012, and mailed a Notice of Case Action informing Claimant of the termination.
5. On [REDACTED]5/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On [REDACTED]/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A53) at the hearing.
9. On [REDACTED]/13, the new medical documents were forwarded to SHRT.
10. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.21.
11. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'4" and weight of 162 pounds.
12. Claimant has a relevant history of tobacco and alcohol abuse.
13. Claimant's highest education year completed was the 11th grade.
14. Claimant was an ongoing Medicaid recipient.
15. Claimant alleged disability based on impairments and issues including back pain, psychological problems and migraine headaches.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program 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 Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant noted special arrangements in order to participate in the hearing. Claimant testified that she does not drive, feels agoraphobic and may require time to calm or stand-up during the hearing. Claimant found transportation to the hearing and was advised that she may stand-up and or take breaks as needed during the hearing. Claimant expressed satisfaction with the accommodations.

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).

The analysis of Claimant's MA benefit eligibility depends on whether Claimant was an applicant or an ongoing recipient. Once an individual has been found disabled for

purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994.

In evaluating a claim for ongoing MA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. Prior to the commencement of a disability analysis, the medical documents should be considered.

Medical documents (Exhibits 153-178; 185-200) from a previous disability claim were presented. Presumably, these documents directly led to Claimant's approval for Medicaid based on disability. All cited documentation was from 2011. Most of the documentation concerned complaints of back pain and psychiatric issues.

A Psychiatric/Psychological Examination Report (Exhibits 179-181) from an examination dated [REDACTED]/11 was presented. The examining physician noted Claimant suffered Axis I diagnoses of bipolar disorder and severe depression. Claimant's GAF was noted as 30.

The examining physician also completed a Mental Residual Functional Capacity Assessment (Exhibits 183-184). This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". It was noted that Claimant was markedly limited in 18 of 20 listed abilities and moderately limited in the other two.

Psychological treatment documents (Exhibits A4-A10) from [REDACTED]/2012 were presented. It was noted that Claimant was recently arrested for disorderly conduct after drinking. It was noted that Claimant's GAF was 55.

Various Office Notes (Exhibits 44-51; 54-81) covering the period of [REDACTED]/2012-[REDACTED]/2012 were presented. Various diagnoses and impressions included: hypoglycemia, hearing loss, constipation, foot bunions, back pain, incontinence, hemorrhoids, finger swelling, finger injury from a blender, neck pain, eye swelling, chronic pruritis causing shoulder pain and IBS symptoms.

Hospital documents (Exhibits 20-24; 28-32) from a [REDACTED]/12 admission were presented. It was noted that Claimant presented with complaints of chest pain. It was noted that Claimant had a gastric bypass in 2008 and has since lost 236 pounds. It was noted that Claimant was discharged on [REDACTED]/12 and received two new medications. Cardiac testing documents (Exhibits 111-116) noted that Claimant's ejection fraction was 70-75%. Discharge diagnoses of upper respiratory infection and atypical chest pain were noted.

A medical report (Exhibit 94) of acute abdominal series dated [REDACTED]/12 was presented. An impression noted no abnormalities.

Psychological treatment documents (Exhibits A14-A16) from [REDACTED]/12 were presented. It was noted that Claimant recently drank alcohol and that she feels lonely and abandoned.

A Psychiatric/Psychological Examination Report (Exhibits 139-141) from an examination dated [REDACTED]/12 was presented. The examining physician noted Claimant suffered Axis I diagnoses of: bipolar disorder, panic disorder, alcohol disorder and eating disorder. Claimant's GAF was noted as 55.

The examining physician also completed a Mental Residual Functional Capacity Assessment (Exhibits 138 and 142). It was noted that Claimant was markedly limited in 4 of 20 listed abilities including the abilities to: perform activities within a schedule, completing a normal workday without psychological interruption, interact appropriately with general public and travel to unfamiliar places.

A radiography report (Exhibit 93) of Claimant's cervical spine dated [REDACTED]/12 was presented. An impression noted an unremarkable examination.

An Operative Note (Exhibits 82-83) dated [REDACTED]/12 was presented. It was noted that Claimant underwent a thigh lift with liposuction and a breast augmentation.

A Discharge Summary (Exhibits 17-19) was presented. It was noted that Claimant was admitted on [REDACTED]/12. It was noted that Claimant presented with complaints of vomiting and thigh pain. It was noted that an EGD revealed no explanation for Claimant's symptoms. A discharge diagnosis of cellulitis was noted. Noted comorbidities included: gastric bypass, diabetes, anxiety, depression and migraines. It was noted that Claimant was discharged on [REDACTED]/12 in stable condition. The documents noted that Claimant should continue taking 28 different medications.

Hospital documents (Exhibits 15-16; 25-27) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of abdominal distention, burning pain in all quadrants and vomiting after eating. It was noted that a CT of the abdomen revealed no changes from radiography obtained during a recent plastic surgery hospitalization. It was noted that labs were stable. It was noted Claimant's condition improved over the stay and that she was discharged on [REDACTED]/20/12 in stable condition.

An Office Note (Exhibits 52-53) dated [REDACTED]/2012 was presented. It was noted that Claimant was 10 months post L5-S1 fusion surgery. It was noted that Claimant was progressing slowly due to deconditioning and gastric bypass surgery complications.

An Office Note (Exhibits 40-42) dated [REDACTED]/12 was presented. It was noted that Claimant presented with complaints of chronic fatigue and insomnia for the past 27-30 years. An impression of psychophysiological insomnia was noted. It was noted that Claimant's medications and psychological problems were contributors to fatigue and lack of sleep.

An Office Note (Exhibits 38-39) dated [REDACTED]/12 was presented. It was noted that Claimant presented for follow-up of a severe iron deficiency. Impressions of iron-deficiency anemia and Vitamin B12 deficiency, secondary to gastric bypass, were noted.

An Office Note (Exhibits 36-37) dated [REDACTED]/12 was presented. It was noted that Claimant presented for trochanteric bursitis follow-up. It was noted that Claimant complained of a stabbing hip pain. An impression of bursitis flare-up, once per week was noted.

Office Notes (Exhibits 33-35) from [REDACTED]/12 and [REDACTED]/12 were presented. It was noted that Claimant complained of cervical spine tenderness and pain. It was noted that the pain was ongoing for several weeks and was exacerbated by light and activity. It was noted that Claimant could not take NSAIDs due to a previous bariatric surgery. An assessment of occipital neuralgia with headaches and C5-C6 disc bulge were noted.

Medical progress documents (Exhibits A27-A34) from [REDACTED]/2012 were presented. It was noted that Claimant continues to eat chalk. It was noted that Claimant had difficulty with sleeping and felt depressed. It was noted that Claimant reported forgetting things because she felt too drugged. A history of suffering sexual abuse was noted. It was noted that Claimant drinks a bottle of wine daily and sometimes goes out drinking. It was noted that Claimant was told to quit drinking, but that she likes it. A list of 42 different prescriptions (many were skin ointments) were listed. Claimant's GAF was noted as 55.

Claimant's most prominent problems appear to be symptoms related to depression and/or bipolar disorder. Both disorders are covered by the 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.

Starting with Part A, there were documented complaints and treatment for: insomnia, weight changes, difficulty in concentration and anhedonia. It is found that Claimant meets Part A of the above listing.

Turning to Part B, the evidence tended to establish notable improvements in Claimant's psyche between 2011 and 2012. Claimant's 2011 GAF of 30 is noted by the Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) within a range as reflective of behavior that is considerably influenced by delusions or hallucinations OR serious impairment, in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends). DSM-IV notes that Claimant's GAF of 55 to be within a range that is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

Despite improvement, it was still noted that Claimant had marked psychological restrictions in 2012. Claimant was found to have marked restrictions in two areas involving concentration and moderate restrictions in four other abilities. Claimant was found to have two marked social interaction restrictions and three other abilities where she had moderate restrictions. This evidence was supportive in finding that Claimant is markedly restricted in concentration and to a lesser extent, social interactions.

Claimant's testimony implied that she was unable to tend to her own needs due to psychological disorders. The testimony was supported by her son who claimed that he had to have his mother move-in with him so that she could receive appropriate care. This tends to support a finding that Claimant is markedly limited in daily activities.

Claimant testified that she stopped drinking only one month prior to the hearing. Claimant also testified that she takes 32 different medications. For Claimant to drink any alcohol while taking 32 medications hints that alcohol abuse may be a material factor to Claimant's problems.

Psychological treatment documents referenced Claimant's alcohol dependence, including making it part of Claimant's diagnosis. It is exceptionally tempting to consider alcohol to be material to a finding of disability given that Claimant's dependence and restrictions overlap. Ultimately, the presented medical records did not sufficiently link Claimant's continued alcohol use with Claimant's psychological impairments. The need for multiple psychological medications tended to establish alcohol use was a symptom of Claimant's problems rather than a cause.

Based on the presented evidence, it is found that Claimant made psychological improvements since 2011, but meets the listing for affective disorders. It is further found that alcohol is not a material factor. It is found that Claimant is a disabled individual and that DHS improperly terminated Claimant's MA benefit eligibility.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for

SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It has already been found that Claimant is disabled for purposes of MA benefits based because Claimant's impairments meet the SSA listing for affective disorders. The analysis and finding equally applies to Claimant's eligibility for SDA benefits. It is found that DHS improperly terminated Claimant's eligibility SDA benefits.

DECISION AND ORDER

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

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

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



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

Date Signed: 9/25/2013

Date Mailed: 9/25/2013

NOTICE OF APPEAL: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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:

