

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

**IN THE MATTER OF:**

██████████  
██████████████████  
██

Reg No.: 2013 55000  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: September 16, 2013  
Wayne County DHS (19)

**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, an in person hearing was held on September 16, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and the Claimant's Authorized Hearing Representative, ██████████ ██████████ who appeared on his behalf. ██████████, Claimant's mother, also appeared as a witness. Participants on behalf of the Department of Human Services (Department) included ██████████ Medical Contact Worker.

**ISSUE**

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

**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 November 21, 2012 the Claimant submitted an application for public assistance seeking MA-P.
2. On March 26, 2013 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on April 4, 2013.

4. On June 17, 2013, the Department received the Claimant's timely written request for hearing.
5. On August 16, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. Exhibit 2
6. The Claimant alleged mental disabling impairment(s) due to Bipolar Disorder with depression and Panic Disorder with panic attacks.
7. The Claimant has alleged physical disabling impairments which include hypertension, left foot, leg and hip pain, cervical spine pain, carpal tunnel in both hands, and migraine headaches.
8. At the time of hearing, the Claimant was ■ years old with a ■ birth date. The Claimant is now ■ years of age. The Claimant is 5'11" feet tall in height; and weighed 230 pounds.
9. The Claimant has a high school education and attended 5 semesters of college and did not obtain a degree and failed some classes. The claimant attended special education classes during his school years. The Claimant's past work history includes pizza store dough maker, grocery store dairy stocking, Pet Supplies Plus, stocking, and AmeriCorps training. The Claimant has not held any job longer than several months and was dismissed from the AmeriCorps training for inability to adapt to the program, displaying a disregard for the rules and regulations. Much of the work has been less than full time. At the time of the hearing the Claimant was not employed.
10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

### **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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is

considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

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) The person claiming a physical or mental disability has the burden to establish it 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) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c) (3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c) (2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a) (1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a

particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a) (1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a) (4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b) (1) (iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a) (4) (i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a) (b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a (e) (2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c) (2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The

last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity; therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

*Id.* The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing*

*Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleged mental disabling impairment(s) due to Bipolar Disorder with depression and Panic Disorder with panic attacks.

The Claimant has alleged physical disabling impairments which include hypertension, left foot, leg and hip pain, cervical spine pain, carpal tunnel in both hands, and migraine headaches.

A summary of Claimant's medical evidence follows.

The Claimant has been in treatment at the Development Centers since [REDACTED]. As a patient the Claimant receives psychiatric care, medication monitoring, individual therapy and recently case management assistance. The Claimant is seen approximately twice per month.

The Claimant was evaluated at Development Centers in [REDACTED] at which time his GAF score was 50 and diagnosis was Bipolar Disorder depressed mood, Panic Disorder without agoraphobia with prognosis fair to guarded.

In July 2012 the Claimant was evaluated again as Bipolar depressed with Panic Disorder and GAF of 60. At time of the review Claimant was working part time. The report notes Claimant was hospitalized twice in [REDACTED] for mental health problems. In [REDACTED] substance abuse treatment was recommended. The notes indicated ongoing sleep interruption, and difficulty focusing.

A Mental Residual Functional Capacity Exam was completed by the Claimant's treating psychiatrist on [REDACTED]. The examiner found the Claimant not significantly limited in ability to understand and remember one or two step instructions and moderately limited in ability to remember detailed instructions. In the category Sustained Concentration and Persistence the Claimant was moderately limited in ability to carry out detailed instructions and ability to maintain attention and concentration for extended periods. Many of the categories were rated as "Unknown."

In [REDACTED] the Claimant was hospitalized due to medication overdose with suicide attempt. The Claimant voluntarily admitted himself for inpatient treatment. At the time of the hospital stay during a psychiatric evaluation, the Claimant was seen lying withdrawn in bed with dark glasses on and engaging passively and unable to verbalize spontaneously, poor eye contact and some psychomotor retardation. Claimant

expressed depression, hopelessness and worthlessness without hallucinations. Insight, judgment and impulse control was limited. GAF was 20-30 and diagnosis was Bipolar Disorder, currently depression, marijuana and prescription drug abuse. The Claimant was hospitalized for 7 days and discharged with GAF of 30 and Bipolar Disorder currently depressed, with substance abuse. Hypertension was also noted. Prognosis was fair with treatment.

A clinical assessment of the Claimant was completed on [REDACTED]. The report notes Claimant continued having anxiety and depression and notes recent 12-day hospitalization after suicide attempt after taking 20 to 30 Klonopin. The notes indicate that Claimant was going to training for AmeriCorps in [REDACTED]. Diagnosis was Bipolar Disorder, with depressed most recent episode; Panic Disorder without agoraphobia and rule out Personality Disorder. GAF was 60.

In [REDACTED] the clinical notes indicate that Claimant was noted as being unable to focus and cannot finish what he starts with reports of being anxious and depressed. New medication prescribed for mood depression and attention problems.

A clinical assessment was completed on [REDACTED] which noted that Claimant has friends and that Pristique was working well for mood stabilization. Mood was stable. The Claimant did not complete AmeriCorps due to being dismissed from the program. In [REDACTED] Claimant was seeking employment and planning to attend school in the fall. At the time the notes indicated he was depressed, no hallucinations oriented X4, thought content was organized and coherent, behavior was cooperative, affect was anxious and constricted, speech was goal directed and concentration was poor.

The Claimant has continued outpatient psychiatric treatment with Development Centers and saw a therapist and received services at least twice a month through much of [REDACTED].

The Claimant was seen for pain in his left foot on [REDACTED]. The Assessment was equinus bilaterally left greater than right, plantar fasciitis of the lateral plantar arch, left foot, possible Morton's neuroma, second interspace left foot, capsulitis of the fourth and fifth metatarsophalangeal joints as well as the fourth metatarsal cuboid joint left foot, and limb length discrepancy, left limb shorter than right. The Claimant received an injection in his foot in two places to alleviate pain and Claimant was advised to get arch supports.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some objective medical evidence establishing that he does have some mental limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more

than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts mental disabling impairments due to Bipolar Disorder with depression and Panic Disorder with panic attacks.

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for this disorder is met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

The Listing was carefully reviewed and it is determined for the reasons set for below that the Claimant meets listing 12.04 (C) which requires:

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

In this case, the record reveals ongoing treatment for Bipolar Disorder, depression, anxiety and Panic Disorder. The record presented presents a young individual who has been hospitalized three times since [REDACTED] with the last reported hospitalization of a 7-day stay duration. The Claimant credibly testified that he suffers from extreme anxiety and panic much of the time, particularly in work situations. The record presented that the Claimant has demonstrated that he is unable to maintain employment for any meaningful length of time and has been fired from positions due to inability to complete his work assignments. The Claimant's last training for work assignment with FEMA through AmeriCorps resulted in his dismissal for failure to be able to follow the rules and comply with AmeriCorps requirements. The assignment lasted approximately 3 weeks. The Claimant described in detail his difficulty maintaining employment particularly because of both physical problems and emotional problems, causing him to have difficulty processing and staying focused on his job, and keeping up with the pace of work, difficulty dealing with employers and difficulty overall getting along with individuals



in the workplace. Claimant's testimony was substantiated by his mother who indicated that Claimant's life is made extremely difficult due to his mental illness, and on a bad day he cannot get up and needs consistent help.

The Claimant's medical records have established a serious difficulty with ability to function in an educational setting and work setting. The Claimant has taken college level class work but has difficulty succeeding due to failing course work and completing. Additionally at the hearing the Claimant presented as anxious and nervous, and depressed. The Claimant credibly testified to symptoms including sleep disruptions throughout the night, anxiety panic attacks at least two times weekly and on bad weeks, 3 or 4 times weekly. Claimant also credibility testified that he had trouble making any decisions. His last suicide attempt was due to the loss of his job. His eating habits can be irregular and he suffers from severe concentration and focus problems associated with his Bipolar Disorder and Panic Disorder. When asked how he felt at the hearing he stated, "Anxious, lost, tired and judged."

The Claimant has treated for several years with no significant change or improvement, demonstrated by his inability to hold a job for any length of time and his several in-patient hospitalizations.

Reference must also be made to the mental residual functional capacity assessment which was completed by the Claimant's psychiatrist. Much of the examination noted "unknown" with regard to workplace abilities and conflicts with the other medically documented evidence of Claimant's weaknesses as a result of his mental impairments. Most of the evaluation gave the Claimant a moderately impaired score which indicates that the Claimant's ability to perform is impaired. The evaluator found Claimant's GAF Score was 60, which is borderline for finding impairment, but an overall view of the medical records demonstrates that notwithstanding treatment, Claimant's progress was minimal and sporadic. Given the inability of the psychiatrist to complete many of the categories on the Mental Residual Functional Capacity assessment, little weight was given to the evaluation.

Overall, based on the testimony of the Claimant, the testimony of the Claimant's mother and the independent medical evidence presented, it is determined that the Claimant has met the Listing 12.04 C or its medical equivalent. It is determined that the Claimant exhibited recurrent symptoms associated with Bipolar Disorder and has at least 3 hospitalizations for mental illness associated with his mental impairments which are a sign of marked distress.

The records and evaluations of the Claimant indicate that the Claimant will need continuing treatment.

Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent of, a listed impairment within 12.00, specifically 12.04 C (1). Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

In this case, the Claimant is found disabled for purposes of the MA-P program;

**DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant  disabled  not disabled for purposes of the MA-P and/or SDA benefit program.

Accordingly, the Department's determination is  AFFIRMED  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:

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the November 21, 2012 application for MA-P to determine the Claimant's eligibility and determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall review the Claimant's continued eligibility in February 2015 in accordance with Department policy.



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

Date Signed: February 28, 2014

Date Mailed: February 28, 2014

2013-55000/LMF

**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]  
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