

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-64203
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: January 22, 2014
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 January 22, 2014, from Redford, Michigan. Participants included the above-named Claimant. [REDACTED], Claimant's father, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 [REDACTED], Claimant applied for MA and SDA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED] the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 4-6) informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 204.00
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A15) 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 [REDACTED], 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 an additional 90 days.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00 (see Exhibit B11)
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet which added additional documents (Exhibits B1-B10) and updated SHRT decision (Exhibit B11).
14. As of the date of the administrative hearing, Claimant was a 49-year-old male with a height of 5'8" and weight of 228 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was a Bachelor of Science in Accounting.
17. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient.
18. Claimant alleged disability based on impairments and issues including hand and arm tremors.

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).

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 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant testified that he makes \$14 for refereeing hockey games for kids. Claimant testified that he referees two games per week. Claimant denied any other employment since applying for MA benefits. 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 (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 medical history compiled from testimony and medical history and the a summary of relevant submitted medical documentation

Claimant has a history of mental health problems. In 2009, Claimant attempted to overdose on medication. A second hospitalization occurred in 3/2010 when Claimant testified that he had a nervous breakdown. Claimant testified that he sees a psychiatrist once per month. Claimant testified that he receives job training through a treating psychological facility.

A Psychiatric Evaluation (Exhibits 25-29) dated [REDACTED] from a treating mental health facility was presented. Axis I diagnoses of major depressive disorder and bipolar disorder were noted by a psychiatrist. The following observations were noted: adequate attention, adequate impulse control, fair judgment, oriented x3 and cooperative attitude. Claimant's GAF was 50.

Mental health treatment documents (Exhibits 21-25; 30-45) from [REDACTED] through [REDACTED] were presented. On [REDACTED], it was noted that Claimant received the following medications: citalopram, clonazepam, Geodon and Trazodone. On [REDACTED], a slowed psychomotor activity was noted. Poor impulse control was noted.

A disability Determination Evaluation (Exhibits B1-B10) dated [REDACTED] was presented. The evaluation was completed by a disability adjudicator and a person signing with a Ph.D, presumably a doctor of psychology. The determination noted that Claimant had moderate limitations in remembering detailed instructions and maintaining attention for extended periods. Moderate restrictions were noted in interacting with the public. Moderate adaptability restrictions were noted. It was noted that Claimant was capable of performing simple, low-stress and unskilled employment. And was therefore, not disabled.

A letter (Exhibit 11a) dated [REDACTED] from Claimant's physician was presented. The physician noted that Claimant suffers from bipolar disorder, anxiety and depression. Claimant's physician noted that Claimant cannot comprehend any reading or television. Claimant's physician opined that Claimant was incapable of working "at this time". The physician wrote a similar letter (Exhibit 4) on [REDACTED] which noted that Claimant made weird facial expressions and had tremors.

A Medical Examination Report (MER) (Exhibits 13-15) dated [REDACTED] was presented. The physician who signed the report noted an approximate three-year history of treating Claimant. The physician provided diagnoses of bipolar disorder, anxiety and depression. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs. It was noted that Claimant could not lift any amount of weight. It was noted that Claimant could stand or walk for two hours in an 8- hour day. It was noted that Claimant had difficulties with comprehension, sustained concentration, reading and writing.

A Mental Residual Functional Capacity Assessment (MRFCA) (Exhibits 19-20) dated [REDACTED] was completed by Claimant's treating physician. Claimant testified that he completed the document but that his physician signed-off on Claimant's responses. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. It was noted that Claimant was not limited in 3/3 understanding and memory abilities, 6/8 concentration abilities, 5/5 social interaction abilities and 3/4 adaptation abilities. It was noted that Claimant was markedly restricted in sustaining concentration for extended periods and responding appropriately to changes in the work setting.

A letter (Exhibit A5) from a new treating physician was presented. It was noted that Claimant is disabled for at least a period of three years, until Claimant could get his condition stabilized.

A letter (Exhibit A8) from a treating neurologist dated was presented. It was noted that Claimant had drug-induced tremors and slowness of movements. The physician noted that Claimant was unable to work.

The handwriting of the MER and MRFCA appeared identical to other documents completed by Claimant. Claimant conceded that he completed the documents but that his physician endorsed the restrictions. Claimant freely admitted the method of

completing the documents when questioned. Claimant's demeanor suggested no ill intent by Claimant. The MER and MRFCA must be evaluated to determine their reliability.

The MER noted that Claimant could not lift any weight, even less than 10 pounds. There was no persuasive medical evidence justifying such a restriction. Claimant is not found to have lifting restrictions.

The MRFCA appeared to be much better supported. Claimant was found restricted only in a single adaptability ability and one concentration ability. Claimant's history of mental health treatment (multiple hospitalizations) is consistent with such restrictions. Other noted symptoms (e.g. slowed psychomotor function) are also consistent with marked restrictions. Claimant's method of completing the document was unorthodox but acceptable. More importantly, the restrictions were consistent with the medical evidence. It is found that Claimant has significant psychological restrictions in memory and adaptability since at least 4/2013.

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 restrictions and symptoms related to bipolar disorder. Bipolar disorder is an affective disorder covered by Listing 12.04 which reads as follows:

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.

Claimant's physician determined Claimant had a GAF of 50. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social,

occupational, or school functioning (e.g. no friends, unable to keep a job).” Claimant’s GAF was consistent with marked psychological restrictions.

Claimant’s physician also determined that Claimant had marked work restrictions. The restrictions were ongoing despite several months of ongoing therapy. The opinion that Claimant’s mental state was deteriorating is notable. It is found that Claimant has marked concentration and social restrictions.

Claimant does not fit neatly into any of the Part C requirements. Claimant has a history of two episodes of decompensation (e.g. hospitalizations) though the duration of each hospital stay was unverified.

Claimant’s regular treatment for bipolar disease is suggestive that any increase in his demands could cause decompensation, however, other evidence suggests otherwise. Claimant performs part-time employment as a hockey referee. Though the employment is extremely limited, it is suggestive of an ability to handle the stress of employment.

Consideration was given to Claimant’s employment history. Claimant presented a consistent employment history until it was interrupted by psychological decompensation. Claimant’s work history is supportive in finding that Claimant is not a malingerer and is making efforts in returning to work.

Turning to Part A, there was evidence of psychomotor agitation and concentration difficulties, there was no evidence of other symptoms. There was no evidence of any manic symptoms.

Though Claimant’s medical history is not the perfect fit for Listing 12.04 there was sufficient evidence that Claimant is unable to work due to bipolar disorder. Relevant factors included: psychomotor agitation, a history of decompensation, continuous psychotherapy including vocational therapy, marked restrictions in concentration and adaptability. It is found that Claimant meets the equivalent of Listing 12.04 and is therefore a disabled individual.

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 (1/2013), p. 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 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- 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).
- Id.*

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet SSA Listing 12.04. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

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 and SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for MA and SDA 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 benefits.

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



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

Date Signed: 4/3/2014

Date Mailed: 4/3/2014

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:

