

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

IN THE MATTER OF:



Reg. No.: 201369806
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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, a telephone hearing was held on February 5, 2014. Claimant personally appeared and provided testimony. [REDACTED] a mental health case manager with Treatment Innovations, also appeared and provided testimony on Claimant's behalf. The Department of Human Services (Department) was represented by [REDACTED], [REDACTED] and [REDACTED], [REDACTED] both of whom are eligibility specialists with the Department's Saginaw County office.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On March 26, 2014, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 July 18, 2013, Claimant submitted an application for public assistance seeking MA-P benefits and SDA benefits.
2. On September 18, 2013, the Medical Review Team (MRT) found Claimant not disabled. (Exhibit A, pp. 1-2)
3. On September 18, 2013, the Department notified Claimant of the MRT determination.
4. On September 19, 2013, the Department received Claimant's timely written request for hearing.
5. On November 23, 2013 and March 24, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled. (Exhibit B, pp. 1-4)
6. Claimant alleged physical disabling impairments due to chronic back pain, torn tendons, asthma, and chronic obstructive pulmonary disease.
7. Claimant alleged mental disabling impairments due to bipolar disorder and depression.
8. At the time of hearing, Claimant was 50 years old with a [REDACTED] birth date; was 5'5" in height; and weighed approximately 142 pounds.
9. Claimant completed 11th grade and obtained his GED. He has no recent employment history due to incarceration.

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

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 416.913. 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 416.945(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). The individual has the responsibility to

provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(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, Claimant is not working therefore is not involved in substantial gainful activity. Accordingly, Claimant is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. 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, Claimant alleges disability due to chronic back pain, torn tendons, asthma, and chronic obstructive pulmonary disease, bipolar disorder and depression.

Claimant's medical records indicate that he was hospitalized on July 1, 2007 following an attempted suicide by Vicodin overdose. On mental status exam, he was hostile, agitated, and restless. His speech was loud and his thought process was paranoid. His mood was angry and anxious and his judgment and insight were found to be poor. His diagnoses were mood disorder and polysubstance dependence and his GAF score was 30.

Claimant was seen on March 25, 2013 at Saginaw County Community Mental Health (SCCMH). He reported having been in prison for the last three years for his 4th DUI. He presented as depressed, temperamental, unsure about life. He reported he is on parole for 17 more months and lost his driver's license until next year. He would like his meds back and reported having taken Xanax, lithium, and Vicodin (for back pain and

headaches). He reported anxiety and having panic attacks. He wants to stop the cycle of ending up in prison and feels his depression is worsening. On mental examination, his appearance was average, eye contact was good, speech was normal, manner was cooperative, anxious, defensive, and entitled. His mood was ok, his affect was irritable, full, anxious and appropriate to mood. His thought processes were logical and he presented without psychosis. His medication plan included Eskalith and Klonopin and case management to focus on relapse prevention, housing, finances, and reintegration. His current GAF as of March 1, 2013 was 51, with prior GAFs being 40 (July 13, 2007 and May 21, 2008), and 79 (April 30, 2009). A range of 41-50 denoting serious symptoms of impairment

Claimant was seen on May 21, 2013 at Covenant HealthCare for left elbow pain, with complaints of numbness and tingling to his left hand and left hand swelling. Claimant reported that a wall fell on him on September 12, 2009. He denied having any neck pain, shoulder pain, or arm pain. He also denied headaches, memory loss, tinnitus, visual disturbance, balance problems, or facial numbness. He also denied having back pain or leg pain. Physical examination showed good range of motion and no spasm or tenderness. Examination of the thoracic and lumbar regions was normal. Range of motion of the lumbar spine was normal. Neurologic examination showed no aphasia. And motor strength testing demonstrated no evidence of weakness, atrophy, or fasciculation. Motor tone was normal throughout and there was no tremor. Sensory examination was normal to pinprick and position sense. Reflex testing demonstrated 2+ and symmetrical deep tendon reflexes and no pathologic reflexes were noted. Cerebellar and gait testing was also normal. There was evidence of tendinitis possibly of the lateral epicondyle. Claimant was referred to an orthopedic surgeon

Claimant was again seen at SCCMH on May 23, 2013 for a walk in medication check. A mental status examination showed that he looked fair with complaints of anxiety and sleep issues and he was drinking. He has no psychotic symptoms and no suicidal ideation. His insight was fair at best. The plan was for Claimant to take Xanax and he agreed to stop drinking. It was noted that his prognosis was completely related to whether he stops drinking.

Claimant was again seen at SCCMH on June 6, 2013, at which time he reported doing fairly well and had been cleaning from drinking for 17 days.

Claimant was again seen at SCCMH on August 22, 2013 for a medication review. He noted some depression at times and difficulty finding work. His dress and grooming were appropriate and his mood was calm but at times aggressive and defensive. His affect was appropriate and he was orientated to person, place, time and situation. He admitted to suicidal ideation with a plan but denied intent. He has significant history of substance abuse and appeared to minimize his current consumption. He reported struggling with mood swings and depression, and anger. He verbalized a desire to

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make positive life changes. He had minimal insight into his mental health and substance abuse. His diagnoses were bipolar disorder not otherwise specified, cannabis dependence, alcohol dependence, and rule out antisocial personality disorder.

Claimant was again seen at SCCMH on January 8, 2014 and he presented as very agitated, restless, grandiose, and pacing, angry, irritable, and unable to sit still. He noted he was on parole.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, while Claimant has presented no medical evidence establishing a physical impairment or any physical limitations on his ability to perform basic work activities, he has presented some medical evidence confirming diagnoses of a bipolar disorder not otherwise specified, cannabis dependence, alcohol dependence. The evidence shows that he does have some moderate mental limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant's basic work activities. Further, the impairment has 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnosis of a bipolar disorder not otherwise specified, cannabis dependence, alcohol dependence.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

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 these disorders is met when the requirements of 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 distractability; 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 on 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 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 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.

In this case, the evidence confirms treatment/ diagnosis of a bipolar disorder not otherwise specified, cannabis dependence, alcohol dependence. The evidence reveals, in part, that Claimant has some depression, anger, and mood swings at times and difficulty finding work, which has been significantly inhibited by Claimant's criminal history. Additionally, the testimony of Claimant's social worker, [REDACTED] [REDACTED] shows some moderate limitations in the area of social interaction and the use of public transportation. However, there is no evidence in the record that Claimant is significantly limited in his ability to remember locations and work-like procedures, understand and remember one or two-step instructions or detailed instructions, carry out simple, one or two-step instructions or detailed instructions or maintain attention and concentration for extended periods. Claimant was also not significantly limited in his ability to work in coordination with or proximity with others without being distracted by them, or his ability to make simple work-related decisions, or his ability to be aware of normal hazards and take appropriate precautions.

Moreover, Claimant's most recent Global Assessment of Functioning (GAF) score was 51 (March 1, 2013), establishing that his functioning indicates moderate difficulty in social, occupational, or school functioning. To be sure, a GAF of 41-50 reveals serious symptoms OR any serious impairment in social, occupational, or school functioning, while a GAP score of 51-60 indicates moderate symptoms (e.g., flat affect and

circumlocutory speech, occasional panic attacks) or moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).

In light of the foregoing, particularly the fact that the evidence does not demonstrate that Claimant has any marked restriction of activities of daily living, or marked difficulties in maintaining social functioning, or marked difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended durations, it cannot be said that Claimant's impairments meet, or are the medical equivalent thereof, a Listed impairment within 12.00 as detailed above. In this regard, Claimant's testimony regarding the extent to which his symptoms inhibit his ability to function must be properly weighed against the backdrop of the objective medical evidence. Accordingly, the Claimant is found not disabled at Step 3 with no further analysis required.

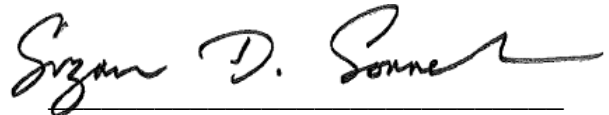
The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and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

In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, he is found not disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs. Accordingly, it is ORDERED:

The Department's determination is **AFFIRMED**.



Suzanne D. Sonneborn
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 31, 2014

Date Mailed: March 31, 2014

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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

SDS/hj

cc:

