

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2013-66691
Issue Nos.: 4009
Case No.: ██████████
Hearing Date: January 29, 2014
DHS County: Wayne County (43)

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, a telephone hearing was held on January 29, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. A witness, ██████████, also appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the State disability Assistance (SDA) 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 June 25, 2013, the Claimant submitted an application for public assistance seeking State Disability Assistance (SDA).
2. On August 19, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on August 22, 2013.
4. On October 11, 2013, the Department received the Claimant's timely written request for hearing.

5. On October 11, 2013, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued January 31, 2014 to obtain additional medical evidence. The new evidence was submitted to the State Hearing Review Team on April 7, 2014.
7. On May 29, 2014, the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to back pain due to a back injury and right knee arthritis and pain.
9. The Claimant has alleged mental disabling impairments due to major depressive disorder with psychotic features and anxiety.
10. At the time of hearing, the Claimant was 50 years old with a [REDACTED] birth date. Claimant is 5’11” in height; and weighed 170 pounds.
11. The Claimant has past employment as a pest-control extermination technician.
12. The Claimant’s impairments have lasted or are expected to last for 12 months duration or more.

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 Supplemental Security Income (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 (e.g., 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 to 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 impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 4 and 5. 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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant was not working at the time of the hearing and had not worked since 2005, and 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 mean 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 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).

The Claimant alleges physical disabling impairments due to back pain, due to a back injury and right knee arthritis and pain.

The Claimant has alleged mental disabling impairments due to major depressive disorder with psychotic features and anxiety.

A summary of the Claimant's Medical evidence follows.

The Claimant has treated with a Community Mental Health organization on an outpatient basis for one year. The medical evidence presented by Claimant consists of two psychiatric evaluations by Claimant's treating psychiatrist. The first such examination was completed by Claimant's treating psychiatrist on July 1, 2013. The Claimant was initially referred to the facility due to substance abuse program referral. At the time of the initial examination, the Claimant's GAF score was 48 and the diagnosis was major depressive disorder, recurrent, severe with psychotic features. Psychotherapy was recommended. The Claimant was prescribed antipsychotic medications. At the time, a Mental Residual Functional Capacity Assessment was completed (DHS 49E). At the time of the evaluation, the Claimant was markedly limited in all categories regarding understanding and memory, five of seven categories in sustained concentration and persistence, as regards social interaction markedly limited in ability to interact appropriately with general public, ability to accept instructions and respond appropriately to criticism from supervisors ability to get along with coworkers or peers without distracting or exhibiting extreme behavioral features, and with respect to adaptation the Claimant was markedly limited in his ability to respond appropriately to changes in the work setting to travel in unfamiliar places and to set realistic goals or make plans independently of others.

Another psychiatric evaluation was completed by the Claimant's treating psychiatrist on January 8, 2014 at, which time the Claimant's GAF score was 49 and the diagnosis remained major depressive disorder with psychosis. Another Mental Residual Functional Capacity Assessment was completed at that time. The Claimant was markedly limited in Understanding and Memory in his ability to remember locations and work like procedures, the ability to understand and remember one or two-step instructions, the ability to understand and remember detailed instructions.

The Claimant was markedly limited in Sustained Concentration and Persistence in his ability to carry out detailed instructions, ability to maintain attention and concentration

for extended periods, ability to perform activities within a schedule, maintain regular attendance and be punctual, ability to sustain an ordinary routine without supervision, ability to work in coordination with or proximity to others without being distracted by them, ability to make simple work related decisions, and ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. With respect to Social Interaction, the Claimant was markedly limited in ability to ask simple questions or request assistance, ability to accept instructions and respond appropriately to criticism from supervisors. With respect to Adaptation, the Claimant was markedly limited in all categories, including his ability to respond and be aware of normal hazards and take appropriate precautions, as well as respond appropriately to change in work setting, travel in unfamiliar places or use public transportation and ability to set realistic goals or make plans independently of others.

At the time of the hearing, the Claimant had been in treatment for his mental impairments and psychiatric problems for one year. The Claimant also attends AA meetings. At the time of the hearing, the Claimant was seen twice a month and had monthly medication reviews. The Claimant credibly testified that his mental impairments had been with him for at least 10 years. The Claimant credibly testified that he suffers daily crying spells, panic attacks and paranoia, extreme anger and rage. The Claimant testified to smashing windows, breaking furniture and setting it on fire within the last six months. The Claimant also testified to a suicide attempt by walking into traffic approximately 5 months ago. The Claimant hallucinates and sees shadows of people walking by him and is frightened by these events. The Claimant confirmed he does not always take care of himself and forgets to shower or bathe. The Claimant also at times does not eat. The Claimant's witness, a friend, testified to observing the Claimant speaking to himself and speaking in a confusing manner with the Claimant's thoughts and words running together.

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 objective medical evidence establishing that he does have some physical 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. Listing 12.04 Affective Disorders, and Listing 12.03 Schizophrenic, paranoid and other psychotic disorder, were both evaluated.

Based on the evaluations of Claimant by his treating psychiatrist, (both evaluations set forth in detail above), which evaluations conclude that the Claimant is very markedly limited in all categories of the Mental Residual Functional Capacity Assessment on two evaluations with no improvement, it is determined that the Claimant has met the requirements of listing 12.03 and 12.04 or their equivalent. In addition, the Claimant at the hearing presented in a manner that displayed flat affect and difficulty with concentration. Notwithstanding treatment and medications, the Claimant has shown little, if any improvement. Deference was given to the opinions and evaluation of the Claimant's treating doctor and psychiatrist. It is also determined that alcohol dependence was not material.

Therefore, it is determined based upon the objective medical evidence and a review of the entire record, that the Claimant is found disabled, at Step 3 as Listing 12.03 and 12.04 in combination or their equivalent are met and thus no further analysis required.

The Claimant is disabled for the State Disability Assistance program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

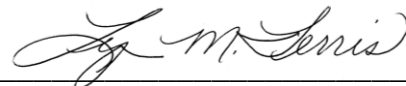
The Department's determination is REVERSED

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:

1. The Department is ORDERED to initiate a review of the application dated June 25, 2013 for SDA, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits which the Claimant was otherwise entitled to receive in accordance with Department Policy.
3. The Department shall contact the Claimant to determine his eligibility for Medical Assistance and send Claimant notification of its determination.

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4. A review of this case shall be set for June 2015.



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

Date Signed: June 30, 2014

Date Mailed: June 30, 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

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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/tm

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