

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-14128
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 5, 2014
County: Wayne (18)

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 May 5, 2014, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED], testified and appeared as Claimant's authorized hearing representative. [REDACTED], Claimant's girlfriend, 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) 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 benefits (see Exhibits 56-57).
2. Claimant's only basis for MA 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 45-47; 49-50) informing Claimant's AHR of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 48).
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant work.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A26) 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 additional 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 90 days from the date of hearing.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.21.
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 43 year old male with a height of 5'10" and weight of 227 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was a Medicaid recipient since [REDACTED]
18. Claimant alleged disability based on impairments and issues including neuropathy and post-traumatic stress disorder (PTSD).

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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

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 credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. 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 a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 13-39) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of leg abscesses. It was noted that extensive incision and drainage was performed on "quite an extensive abscess". It was noted that Claimant felt better after surgery. A medical history significant for HTN was noted. It was noted that Claimant smoked between 1 ½-2 packs of cigarettes per day. It was noted that Claimant needed aggressive control of his blood sugars or he will face death and/or amputation. Discharge diagnoses included: necrotizing fasciitis, DM, and tobacco abuse. A history of PTSD was noted; discharge instructions noted Claimant should continue taking Abilify and pristiq to treat PTSD. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits A1-A5) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of severe chest pain, ongoing for several weeks. It was noted that an urgent left heart catheterization, left ventriculography, and selective

coronary angiography were performed. It was noted that Claimant was a noncompliant diabetic.

Treating physician documents (Exhibits A6-A7) dated [REDACTED] were presented. It was noted that a general examination was performed; all examined areas were normal.

An Internal Examination Report (Exhibits 2-1 – 29) dated [REDACTED] was presented. The report was completed by a physician with no history of treating Claimant. It was noted that Claimant reported reduced stamina. It was noted that Claimant reported a history of depression. It was noted that Claimant does not take anti-depressants. It was noted that Claimant walks with a steady gait. Claimant's grip strength was noted to be 5/5. Neurologic, dorsolumbar spine, cervical spine, and lower extremities were noted as normal. It was noted that Claimant performed all walking tests without difficulty. It was noted that Claimant could perform all 23 listed activities which included the following: sitting, standing, bending, carrying, pushing, and pulling. All ranges of motion were noted as normal.

Claimant alleged that he can walk 1 block without stopping (see Exhibit 2-2). Claimant also alleged that he gets out-of breath on the stairs. Claimant reported that his cardiologist advised Claimant not to work (see Exhibit 13).

It was verified that Claimant has a history of cardiac problems. The evidence was insufficient to infer any significant cardiac restrictions. Claimant's most recent examination noted no restrictions. It is found that Claimant does not have significant exertional impairments. Claimant also alleged that he suffers psychological impairments.

A Progress Note (Exhibits A24-A26) dated [REDACTED] from Claimant's treating psychological agency was presented. Various treatment goals from [REDACTED] were noted, and included the following: verbalizing an understanding of PTSD, moving beyond current state of emotional paralysis, and participating constructively in relationships.

A Psychiatric Progress Note (Exhibits A10-A12) dated [REDACTED] from Claimant's treating psychological agency was presented. An Axis I diagnosis of PTSD was noted. It was noted that Claimant has flashbacks and relives events causing death; noted symptoms include sleep impairment, loss of interest in day-to-day activities, and blackouts.

A Progress Note (Exhibits A18-A20) dated [REDACTED] from Claimant's treating psychological agency was presented. It was noted that Claimant appeared for therapy. Noted goals included the following: leaving the house, implement coping strategies, driving, and overcoming emotional paralysis.

A Progress Note (Exhibits A15-A17) dated [REDACTED] from Claimant's treating psychological agency was presented. It was noted that Claimant received ongoing doses of Abilify and Pristiq. Claimant's clinical status was noted as stable.

A Progress Note (Exhibits A13-A14) dated [REDACTED] from Claimant's treating psychological agency was presented. It was noted that Claimant was doing well and that medications are helping him. Claimant's mood and affect were noted as good. An ongoing goal of returning to pre-accident levels of functioning was noted. It was noted that Claimant could get out of his house and that he is able to support his girlfriend following her surgery.

A Progress Note (Exhibits A10-12) dated [REDACTED] from Claimant's treating psychological agency was presented. It was noted that Claimant appeared depressed. It was noted that Claimant was seen for refills of Abilify and Pristiq. A plan to continue medication and psychotherapy was noted. It was noted that Claimant can sleep without Trazadone.

A Progress Note (Exhibits A8-A9) dated [REDACTED] from Claimant's treating psychological agency was presented. It was noted that no changes were made in Claimant's medications.

Presented treatment document established that Claimant suffers multiple psychological diagnoses and symptoms. Only three months of psychological treatment was verified though a more extensive treatment was suggested (e.g. Claimant's GAF was noted to be 48 as of [REDACTED]; see Exhibit A11). The most compelling evidence of impairment was Claimant's story.

Claimant testified that he was employed as a truck driver until [REDACTED]. Claimant testified that he stopped working after his truck struck a 15 year old child who died as a result of the accident. Claimant testified that the incident has left him unable to drive a truck anymore. Claimant testified that he is also severely depressed and withdrawn since the accident. Claimant cited losing 80 pounds in the last year as an illustrative example of his depression. Claimant's testimony was credible and consistent with presented medical records.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, Claimant established having a severe impairment and 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 PTSD. PTSD is an anxiety-related disorder covered by Listing 12.06 which reads:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation

in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

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 both A and C are satisfied.

- A. Medically documented findings of at least one of the following:
1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
 2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
 3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
 4. Recurrent obsessions or compulsions which are a source of marked distress; or
 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home.

Presented records sufficiently established that Claimant has recurrent and intrusive recollections of a fatal car accident. It is found that Claimant meets Part A of the above listing.

Turning to Part B, Claimant's GAF was noted in [REDACTED] to be 48. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that 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)."

Presented records sufficiently described symptoms consistent with marked restrictions (e.g. insomnia, flashbacks, social difficulties, concentration difficulties...). As of [REDACTED],

Claimant leaving his house to support his girlfriend was noted as an accomplishment. Such a modest accomplishment is indicative of marked restrictions.

Claimant's work history was extensive. Thus, it is doubtful that Claimant's lack of mental health progress is related to malingering.

It is also notable that Claimant has no recent history of drug or alcohol abuse. Thus, Claimant's impairments appear to be exclusively caused by PTSD.

It is further appreciated that Claimant appears to have regularly attended psychological treatment since applying for MA benefits. Thus, Claimant is making efforts at overcoming what was described by his therapist as "emotional paralysis".

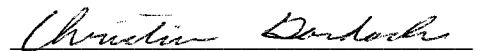
The presented evidence established that Claimant has ongoing marked social interaction and concentration difficulties. It is found that Claimant meets Listing 12.06 and is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA application.

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 benefit application dated [REDACTED]
- (2) evaluate Claimant's eligibility for MA 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 MA benefits.
- (5)

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



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

Date Signed: 7/11/2014

Date Mailed: 7/11/2014

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:

