

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-29851
Issue No.: 2009, 3000, 4009
Case No.: [REDACTED]
Hearing Date: June 26, 2014
County: Wayne (41)

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 June 26, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUES

The first issue is whether Claimant has a Food Assistance Program (FAP) benefit dispute.

The second 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. Claimant was an ongoing FAP benefit recipient.
2. On [REDACTED], Claimant applied for MA and SDA benefits, including retroactive MA benefits from [REDACTED].
3. Claimant's only basis for MA and SDA benefits was as a disabled individual.

4. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 9-10).
5. On [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
6. On [REDACTED] Claimant requested a hearing disputing the denial of MA and SDA benefits; Claimant also cited an unspecified FAP benefit dispute.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.17.
8. As of the date of the administrative hearing, Claimant was a 44 year old male with a height of 5'9" and weight of 175 pounds.
9. Claimant has no known relevant history of substance abuse.
10. Claimant did not complete the 12th grade.
11. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
12. Claimant alleged disability based on impairments and issues including knee pain, abdominal pain, back spasms, and psychological obstacles.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. 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).

Claimant requested a hearing, in part, to dispute an unspecified FAP benefit action. Claimant could not verbalize any FAP benefit disputes that he had with DHS. DHS presented credible testimony that Claimant received the maximum amount of FAP benefits for a group size of one person. DHS testimony also credibly asserted that Claimant's FAP eligibility was not in any jeopardy. Despite the testimony, Claimant failed to grasp there was no need for a FAP benefit hearing. Claimant's hearing request is dismissed concerning FAP eligibility, due to Claimant's failure to specify any FAP benefit dispute.

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 noted special arrangements in order to participate in the hearing. Claimant testified that he was able to participate in the hearing without any special accommodations.

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 and a summary of Claimant's testimony.

Claimant testified that in the 1990s, he was shot in the back four times. Claimant testified that he suffers chronic back and knee pain. Claimant testified that he used a cane in order to ambulate. Claimant testified that he was stabbed in the abdomen in 6/2013. Claimant testified that he underwent emergency surgery. Claimant testified that after surgery, he slipped, while rising from a sitting position, which caused tremendous nerve damage. Claimant testified that he requires the use of a walker to stand and ambulate since getting stabbed. Claimant testified that he sought medical treatment for nerve pain but that doctors told him it was too late for Claimant to be treated.

A Psychiatric Evaluation (Exhibits 19-20; 47-55) dated [REDACTED] was presented. The evaluation was performed by a treating psychiatrist. Noted examiner observations included: anxious appearance, paucity of speech, sadness, fidgetiness, orientation x4, logical and coherent thought, below average intelligence, intact judgment, fair insight, paranoid delusions and hallucinations. Axis I diagnoses of bipolar disorder (severe, with

psychotic features), and panic disorder were noted. Claimant's GAF was noted to be 46. Noted psychotropic medications included the following: Fanapt, Desyrel, and Cymbalta.

Hospital documents (Exhibits 28-29; 37) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with a stab wound to his abdomen (trauma code I). A right femoral nerve transection was noted. It was noted that Claimant's nerve was surgically repaired. It was noted that post-surgery, Claimant was hesitant to get out of bed in order to attend physical therapy. It was noted that Claimant required use of a walker for ambulation. A discharge date of [REDACTED] was noted.

A Medical Examination Report (Exhibits 30-32) dated [REDACTED] was presented. The report was completed by a family medicine physician with an approximate 2 year history of treating Claimant. The following diagnoses were noted: bipolar disorder, anxiety, s/p stab wound, s/p nerve injury, right-side pain s/p fall since discharge. It was noted that Claimant was restricted to occasional lifting of 10 pounds or less. It was noted that Claimant was restricted to sitting of less than 6 hours in an 8 hour workday. It was noted that Claimant was restricted to standing/walking of less than 2 hours per 8 hour workday. It was noted that claimant required use of a walker due to right leg paresis. It was noted that Claimant was restricted from operating repetitive foot controls or repetitive pushing/pulling. It was noted that Claimant had difficulties with social interaction and memory though a psychiatrist would be a superior source. It was noted that nerve pain caused Claimant to require assistance with housework, medications, meal preparation, dressing, grooming, and bathing.

A Medical Examination Report (Exhibits 34-36) dated [REDACTED] was presented. The report was completed by a surgeon with an approximate 2 month history of treating Claimant. The report was handwritten and not easily readable. A diagnosis of a traumatic injury was noted. It was noted that Claimant was restricted to sitting of less than 6 hours in an 8 hour workday. It was noted that Claimant was restricted to standing/walking of less than 2 hours per 8 hour workday. It was noted that Claimant could meet his household needs.

An internal medicine report (Exhibits 11-18) dated [REDACTED] was presented. The report was completed by a consultative physician. It was noted that Claimant reported complaints of right groin pain, stab wound, mental illness, headaches, hypertension, back pain, and asthma. It was noted that Claimant was positive for right eye surgery and right groin surgery. The examiner noted that Claimant needed to use his walker during the examination. An awkward gait and limp on the right were noted. An impression of chronic pain in the right lower extremity was noted. Other examiner impressions included: hypertension, right eye injury, memory problems, and depression. It was noted that Claimant could not perform heel walking, toe walking, nor tandem walking.

Claimant testified that he has walking and lifting restrictions. Presented medical evidence was strongly supportive in finding that Claimant has severe walking and lifting

difficulties since [REDACTED], the month that Claimant was stabbed. For the period before 6/2013, Claimant's restrictions were less clear.

Claimant alleged reasons for disability before [REDACTED] but failed to provide medical documentation; in fact, non-psychological documentation from before [REDACTED] was not presented. Physicians noted various diagnoses for Claimant, all of which related to Claimant's stab wound injuries. It is found that Claimant established severe physical impairments since [REDACTED].

The only evidence supporting that Claimant had impairments before [REDACTED] concerned Claimant's psyche. A diagnosis of severe bipolar disorder was provided by a treating psychiatrist. The diagnosis is suggestive of significant psychological impairments which most probably existed since at least [REDACTED].

Based on the presented evidence, it is found that Claimant had severe psychiatric impairments since [REDACTED]. Accordingly, the disability analysis may proceed 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 related to an abdominal nerve injury. Claimant's injury is not covered by SSA listings though the effects are comparable to knee joint injuries. Knee joint injuries are covered by SSA listing 1.02 which reads as follows:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

As indicated above, the ability to ambulate effectively is defined by SSA in 1.00B2b. This definition reads:

Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Presented medical records verified that Claimant requires use of a walker. Use of a walker is strongly suggestive of an inability to ambulate effectively. This finding was further supported by Claimant's need for household assistance, as stated by his primary care physician.

Claimant's surgeon subsequently noted that Claimant did not require assistance with household needs. The surgeon's statement was not persuasive, partially based on observations of Claimant during the hearing, and partially based on deference given to Claimant's treating physician.

Based on the presented evidence, it is found that Claimant meets the listing (or the equivalent) for joint disorders. Accordingly, Claimant is a disabled individual.

As noted in step two of the analysis, Claimant's physical impairments were only verified since [REDACTED]. A separate listing requires a consideration of disability for the benefit months from [REDACTED].

A diagnosis of bipolar disorder was verified. 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.

Starting with Part A, Claimant's psychiatrist noted that Claimant experienced hallucinations, anhedonia, sleep disturbance, and feelings of worthlessness. It is found that Claimant meets Part A of the above listing.

It was verified that Claimant's GAF was 46, as of [REDACTED]. 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).” When factored with Claimant’s “severe” bipolar diagnoses which included psychotic breakdowns, it is probable that Claimant had marked restrictions in social interactions and/or maintaining persistence. Claimant’s low GAF score and diagnosis are consistent with presuming that minimal increases in mental demands would cause decompensation.

It is known that Claimant was stabbed only two months after psychological diagnoses were made. Circumstances of the stabbing were not provided, but it is reasonably possible that Claimant’s mental illness factored into his injuries.

Based on the presented evidence, it is found that Claimant’s psychological impairments meet the listing for bipolar disorder, for the months of [REDACTED]. When factored with Claimant’s physical impairments, Claimant is found to be a disabled individual as of [REDACTED]. Accordingly, it is found that DHS improperly denied Claimant’s MA benefit application.

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.

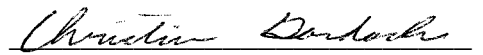
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant’s impairments meet SSA Listings 1.02 and 12.04. The analysis and finding applies equally for Claimant’s SDA benefit application. It is found that Claimant is a disabled individual for purposes 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 and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED], including retroactive MA benefits from [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 MA benefits.

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


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

Date Signed: 7/14/2014

Date Mailed: 7/14/2014

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:

