

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001810
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: August 28, 2014
County: St Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 **August 28, 2014**, from **Centreville**, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist, and [REDACTED] Assistance Payments Supervisor.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit 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 November 25, 2013, Claimant applied for Medicaid (MA-P), retroactive MA-P and SDA.
2. On April 9, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On April 17, 2014, the Department notified Claimant of the MRT determination.
4. On May 6, 2014, the Department received Claimant's timely written request for hearing.
5. On June 16, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged physical disabling impairments of asthma, left eye blurry vision, and migraines.

7. Claimant alleged mental disabling impairments due to learning disability, Asperger's, PTSD, and schizophrenia.
8. At the time of hearing, Claimant was 32 years old with an [REDACTED], birth date; was 5'3" in height; and weighed 185 pounds.
9. Claimant completed the 9th grade, obtained a GED, and has no full time work history in the past 15 years.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. 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 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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity. Therefore, Claimant 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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 asthma, left eye blurry vision, migraines, learning disability, Asperger's, PTSD, and schizophrenia. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

An October 1, 1999, educational evaluation noted a 1995 WISC-III yielded verbal IQ 71, performance IQ 70, and full scale IQ of 68. The current WAIS III yielded a verbal IQ of 76, performance IQ of 81, and full scale IQ of 77, which is in the borderline range of intelligence.

A November 11, 1999, record documents very low borderline intelligence. The verbal IQ was 69, the performance IQ was 69, and the full scale IQ was 67.

2010-2011, records from the Department of Corrects documents diagnosis and treatment of multiple conditions including asthma, headache, learning disability,

Asperger's disorder, personality disorder, mild mental retardation, and at risk for heat related illness.

A January 16, 2012, consultative mental status examination listed diagnoses of pervasive developmental disorder, cognitive disorder, and adult antisocial behavior. Claimant displayed poor function on mental status exam; immediate and recent memory showed deficits; fund of knowledge was inadequate; he was not able to employ abstract reasoning abilities; was inaccurate with mathematical calculations; and social reasoning also appeared to be impaired. It was noted Claimant carried a diagnosis of possible Asperger's disorder in school.

June 2013 records from the vision center documented increased intraocular pressure, risk for glaucoma based on several risk factors, myopia, and regular astigmatism. Visual acuities were 20/20 and 20/40.

Claimant was seen in the Emergency Department May 22, 2013, after a lawn mower battery exploded in his face.

On September 30, 2013, and February 11, 2014, Claimant attended consultative mental status examinations. Diagnoses included paranoid type schizophrenia, learning disorder, and PTSD. Claimant's Global Assessment of Functioning (GAF) was 45-50. It was indicated Claimant would not be able to manage his benefit funds. It was noted Claimant obtained his GED when he was incarcerated and it took him seven years to complete the program. Marked limitations were indicated with the abilities to: understand and remember detailed instructions; carry out simple and detailed instructions; sustain an ordinary routine without supervision; work in coordination or close proximity to others without being distracted by them; and to set realistic goals or make plans independently of others. Moderate limitations were indicated with eight other abilities, including the ability to understand and remember simple one or two step instruction. The comments indicated Claimant presented as an individual who was highly institutionalized and had a distorted view of expectations coupled with poor social skills.

On February 25, 2014, Claimant attended a consultative medical examination. In part, Claimant's mental status appeared normal and his visual acuity was 20/20 in both eyes without corrective lenses. The only diagnosis was asthma noting the lung fields were clear today, there were no findings of cardiac decompensation and he is on inhaler therapy. Tobacco cessation and avoidance of triggers was indicated. However, it was also noted that Claimant's main issue appears to be Asperger's and underlying disability. Claimant's affect appeared stable that date.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that he does have some limitations on the 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 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. The evidence confirms recent diagnosis and treatment of intraocular pressure, risk for glaucoma based on several risk factors, myopia, regular astigmatism, paranoid type schizophrenia, learning disorder, PTSD, and asthma.

Based on the objective medical evidence, considered listings included: 2.00 Special Senses and Speech, 3.00 Respiratory System, and 12.00 Mental Disorders.

Listing 12.05 D requires a valid verbal performance or full scale IQ between 60-70 during the developmental period and 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. The records document had multiple such IQ scores between 67 and 69 in 1995 and 1999. The marked limitations on the September 2013/February 2014 Consultative Mental Status Examination included the abilities to: carry out both simple and detailed instructions; sustain an ordinary routine without supervision; work in coordination or close proximity to others without being distracted by them; and to set realistic goals or make plans independently of others. Claimant credibly testified he always thinks someone is out to get him, he has trouble with groups, both strangers as well as friends/family, some suicidal thoughts, panic attacks, crying spells, and trouble concentrating and staying on task.

Alternatively, listing 12.05C requires a valid verbal performance or full scale IQ between 60-70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function. As noted above, Claimant had multiple such IQ scores between 67 and 69 in 1995 and 1999. Claimant also has other physical or other mental impairments imposing additional and significant work-related limitation of function due to asthma, paranoid type schizophrenia, and PTSD as described above.

Accordingly, it appears Claimant meets or equals the intent and severity requirements of listings 12.05 C and 12.05 D. Therefore, the Claimant is found disabled at Step 3.

In this case, the Claimant is also found disabled for purposes SDA benefits as the objective medical evidence also establishes a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Claimant's impairments did preclude work at the above stated level for at least 90 days.


The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and SDA benefit programs.

DECISION AND ORDER

Accordingly, 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. Initiate a review of the application dated November 25, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for October 2015.
2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/17/2014**

Date Mailed: **9/17/2014**

CL / hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

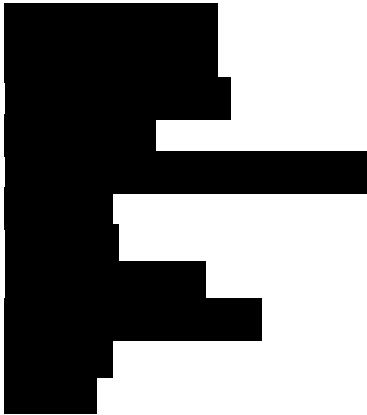
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.