

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004519
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 17, 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 November 17, 2014, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR) / legal counsel. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker. [REDACTED], Assistant Attorney General, appeared as legal counsel for DHS.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA).

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.
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 1-2).
4. On [REDACTED] DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 204.00
7. On [REDACTED], an administrative hearing was held.
8. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
9. During the hearing, the record was extended 60 days so that DHS would schedule and pay for intelligence testing for Claimant; an Interim order Extending the Record was subsequently issued.
10. On [REDACTED], DHS submitted a mental status report (Exhibits 2-1 – 2-4) to the Michigan Administrative Hearings System
11. As of the date of the administrative hearing, Claimant was a 45 year old male.
12. Claimant's highest education year completed was the 12th grade.
13. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 4/2014 and an Adult Medical Program recipient since 4/2013.
14. Claimant alleged disability based on cognitive deficits and depression.

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, it should be noted that Claimant's hearing request was submitted to DHS on [REDACTED] the 91st day after DHS mailed a written notice of denial. DHS policy states that hearing requests must be received within 90 days of the mailing date that notice of a disputed action is given (see BAM 600). This rule is not interpreted to apply when the 90th day following a case action notice mailing date is a non-business day. In the present case, the 90th day following the DHS denial notice was [REDACTED], a

Sunday. Sunday is a non-business day for DHS. Thus, Claimant's hearing request is considered timely because it was submitted to DHS on the first business day after [REDACTED], albeit after DHS business hours.

The above finding is acknowledged to be based on somewhat flawed considerations. The hearing request timeframe to submit document was extended based on DHS being closed on the 90th day after notice was mailed to Claimant. This finding suggests that Claimant can only submit documents during DHS business hours. Yet, Claimant faxed a hearing request to DHS outside of business hours. The findings relied more on the importance of due process and a strict scrutiny of DHS policies when a client's due process might be adversely affected.

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.*, p. 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.*, p. 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.

Various mental health treating agency documentation was presented. Claimant testified that he sees a psychiatrist and a therapist, each once per month. Claimant also testified that he sometimes sees a counselor and/or peer support staff person as needed. Presented documentation was consistent with Claimant testimony. It should be noted that not every session is summarized, though submitted documentation may have verified that Claimant attended a therapy session.

Various mental health treatment documents (Exhibits 178-199) from 4/2013-9/2013 were presented. On [REDACTED], a goal of improving Claimant's emotional stability was noted.

A Psychiatric Evaluation (Exhibits 13-15) dated [REDACTED] was presented. It was noted that Claimant reported depression and ADHD. It was noted that Claimant slept and ate well. Notable observations of Claimant included the following: good grooming,

orientation x4, irritability, good eye contact, normal speech, and below average intelligence. An Axis I diagnosis of major depressive disorder, recurrent, was noted. An Axis II diagnosis of mild mental retardation was noted. Claimant's GAF was noted to be 50. Prozac and Buspar were noted as current medications.

An Initial Psychosocial assessment from a counselor (Exhibits 143-159) dated [REDACTED] was presented. It was noted that Claimant reported math and accounting strengths. It was noted that Claimant was very supportive and involved with his family. It was noted that Claimant assisted his nieces and nephews in going to school. It was noted that Claimant displayed no abnormal or remarkable characteristics. Suicidal ideation and hallucinations were denied. It was noted that Claimant independently performed eating, dressing, grooming, and taking of meds. Claimant's GAF was noted to be 52.

Various mental health treatment documents (Exhibits 126-142; 160-177) from 10/2013-12/2013 were presented. On [REDACTED], an LLPC indicated that Claimant's GAF was 48. On [REDACTED], it was noted that Claimant could get picked up by his counselor due to problems with Claimant's foot.

A Medical Examination Report (Exhibits 8-10) dated [REDACTED] was presented. The form was completed by a physician with an unstated history of treating Claimant. Presumably, the physician only examined Claimant once because the last examination date was also the date of form completion; no first examination date was specified. The physician listed diagnoses of HTN, depression, and eczema. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. The physician opined that Claimant was restricted in sustaining concentration. No basis for the restriction was provided.

Various mental health treatment documents (Exhibits 102-123) from 1/2014-3/2014 were presented. On [REDACTED], it was noted that Claimant showed good eye contact and was engaged during a counseling session. On [REDACTED], Claimant was advised to reapply for SSI benefits. On [REDACTED], an LLPC indicated that Claimant's GAF was 52. Depression from a denial of SSI benefits was noted. On [REDACTED], it was noted that Claimant reported transportation needs.

Various mental health treatment documents (Exhibits 73-101) from 4/2014-7/2014 were presented. On [REDACTED], Claimant reported that he gets angry at his father every week. On [REDACTED], Claimant reported a "wonderful" mood; it was also noted that Claimant reported social difficulties. On [REDACTED], it was noted that Claimant reported not eating for several days and some days where he stays in bed and does not answer the telephone. On [REDACTED] Claimant reported controlled anxiety and depression.

Progress notes from a treating mental health agency (Exhibits 66-72) dated [REDACTED] were presented. It was noted that Claimant received nutritional counseling.

A Psychiatric Evaluation (Exhibits 62-65) dated [REDACTED] was presented. It was noted that Claimant stopped taking meds and that he would like to restart. It was noted that Claimant reported 4-5 hours of sleep and one daily meal. It was noted that Claimant reported racing thoughts and not wanting to do anything. Notable observations of Claimant included the following: unremarkable interview behavior, unremarkable appearance, unremarkable speech, unremarkable motor status, unremarkable mood, unremarkable affect, unremarkable thought content, unremarkable perception, good insight, good judgment, and orientation x3. An Axis I diagnosis of schizoaffective disorder was noted. An Axis II diagnosis of moderate mental retardation was noted. Claimant's GAF was noted to be 52.

A Medication Review Note (Exhibit 49) dated [REDACTED] from a treating psychiatrist was presented. It was noted that Claimant reported "doing all right", though Claimant was observed to be nervously shaking. Claimant reported stress from bills.

A Nursing Progress Note (Exhibits 40-41) dated [REDACTED] was presented. A registered nurse noted that Claimant reported that prescribed meds were working well. It was noted that Claimant denied medication side effects.

An Update Assessment from a treating LLPC (Exhibits 13-29) dated [REDACTED] was presented. Notable observations of Claimant included the following: orientation x4, alert, normal concentration, good judgment, unremarkable thought content, unremarkable thought processes, normal stream of mental activity, unremarkable speech characteristics, and unremarkable interview presentation.

A Treatment Plan Meeting from a treating mental health agency (Exhibits A6-A10) dated [REDACTED] was presented. It was noted that Claimant's dream was to get out of debt. It was noted that everything was "going fine" in his life. It was noted that Claimant was waiting for SSI approval. Noted treatment goals included the following: developing coping skills, attending group therapy 1-4 times per month, and enhancing independence.

A Medication Review Note and Vital Signs Reading from a treating mental health agency (Exhibits A3-A5) dated [REDACTED] was presented. It was noted that Claimant reported ongoing chronic pain, anxiety, and depression. It was noted that Claimant reported feeling fine. Claimant's meds were noted as continued.

A Nursing Progress Note from a treating mental health agency (Exhibits A1-A2) dated [REDACTED] was presented. It was noted that Claimant received a flu-shot injection and smoking cessation advice.

A mental status examination report (Exhibits 2-1 -2-4) dated [REDACTED] was presented. The report was completed by a consultative licensed psychologist. It was noted that Claimant underwent Weschler Adult Intelligence Scale-IV (WAIS4) testing and put forth good effort. Claimant's full scale I.Q. was noted as 65; it was noted to place him in the

“mildly retarded range”. Claimant’s verbal I.Q. was noted as 72. It was noted that Claimant also took a Wide Range Achievement Test which demonstrated scores of 68 in reading and spelling; Claimant’s results were also considered to be in the “mildly retarded range”.

Claimant’s AHR referenced counseling notes which indicated that Claimant sometimes went days without eating. Not coincidentally, the notes were made during a time when Claimant reported not taking prescribed medications. Claimant testified that his height was 6’1” and his weight was 232 pounds; the combination was not indicative of disabling eating conditions. There was no evidence of significant weight loss. There was no evidence that Claimant has eating disorders. The evidence failed to establish any psychological problems related to eating.

Claimant testimony primarily involved psychological and cognitive deficits. A smidge of physical problems were referenced. Some nursing and vital sign check documents were presented. Some physical problems were referenced within counseling documentation. Overall, presented documentation was insubstantial to justify inferences that Claimant has severe physical impairments.

Presented documentation verified that Claimant regularly attends mental health counseling. Some degree of social and cognitive restrictions can be presumed based on Claimant’s low GAF, need for medication, and struggles with depression. Most notably, cognitive function deficits were verified by intelligence testing. It is found that Claimant established a severe impairment and the 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.

The most compelling medical evidence submitted involved Claimant’s cognitive restrictions. The SSA listing pertaining to intellectually-based disabilities reads as follows:

12.05 Intellectual disability. Intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow

directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale I.Q. of 59 or less;

OR

C. A valid verbal, performance, or full scale I.Q. of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale I.Q. of 60 through 70, 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.

Claimant's testimony conceded that he had no history of psychiatric hospitalizations. Claimant's testimony also conceded an absence of suicide attempts. There was an absence of evidence of alarming symptoms (e.g. hallucinations, violent behavior, insomnia...). The evidence regularly noted that Claimant's primary problem is a lack of income. A lack of income, though depressing, is not compelling evidence of the marked restrictions required to meet Subsection D of the above listing.

Claimant testified that he had a panic attack the month before the hearing. Claimant testified that his meds help reduce his anxiety. Claimant's testimony was somewhat indicative of anxiety, though not marked levels of anxiety.

A diagnosis of depression and GAF levels of 48, 50 and 52 were noted. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. 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)." Claimant's GAF is indicative of functioning with marked or near-marked restrictions.

Claimant's consistently low GAF and reports of depression symptoms are debatably sufficient to meet the significant work-related limitation required of Listing 12.05 (c). Based on Claimant's combined restrictions, it is slightly more improbable than probable that Claimant can reasonably be expected to sustain employment given relatively poor cognitive and psychological function. It is found that Claimant meets Listing 12.05 (c) and that Claimant 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 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 benefits.

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



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

Date Signed: **1/2/2015**

Date Mailed: **1/2/2015**

CG / hw

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 48909-8139

CC:

