

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-006817
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: October 16, 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, a telephone hearing was held on October 16, 2014 from Detroit, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's sister, testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly terminated Claimant's State Disability Assistance (SDA) eligibility 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 SDA benefits.
2. Claimant's only basis for SDA 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 SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Claimant was a 51 year old male with a height of 6'2" and weight of 213 pounds.
7. Claimant has no known relevant history of alcohol or illegal substance abuse.
8. Claimant has a Bachelor of Arts in Psychology.
9. Claimant alleged disability based on restrictions related to diagnoses of schizophrenia and other psychological issues.

CONCLUSIONS OF LAW

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.

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Claimant is a disabled individual. *Id.*, p. 3.

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. As noted above, SDA eligibility is based on a 90 days period of disability.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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 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 12 month durational period is applicable to SSA and MA benefits; as noted above, SDA eligibility requires only a 90 day duration of disability.

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.

Mental health agency progress notes (Exhibits 406-422) from 1/2013-3/2013 were presented. Regular weekly psychotherapy sessions for Claimant were referenced.

Hospital documents (Exhibits 424-438) from an admission dated [REDACTED] were presented. It was noted that Claimant's sister's petitioned Claimant to be admitted after he expressed suicidal thoughts. It was noted that Claimant lived alone. It was noted that Claimant was losing weight because his food is gone and that he will not leave the home to buy more. It was noted that Claimant had not taken out the garbage since 8/2012 and that he had not bathed in 2-3 months. It was noted that Claimant reported recurring thoughts on gore and sex. It was noted that Claimant received various medications. Noted discharge diagnoses included major depression and OCD. A discharge date of [REDACTED] was noted. If Claimant attended treatment, a good prognosis was noted.

A psychiatrist letter (Exhibit 423) dated [REDACTED]. It was noted that Claimant experienced recurring homosexual and gory thoughts. Axis I diagnoses of major depressive disorder (single episode, moderate) and OCD were noted. Claimant's GAF was noted to be 60. A plan of psychotherapy was noted.

Mental health agency progress notes (Exhibits 68-86) were presented. The notes were from appointments dated [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Recurring complaints of depression and loneliness were noted.

Mental health agency progress notes (Exhibits 64-67) dated [REDACTED] were presented. It was noted that observations of Claimant included good grooming, orientation x4, nervous mood, good eye contact, normal speech, paranoid delusions, and average intelligence.

Mental health agency progress notes (Exhibits 62-63) dated [REDACTED] were presented. It was noted that Claimant's GAF was 52. It was noted that Claimant felt overwhelmed in applying for SSA.

Mental health agency progress notes (Exhibits 60-61) dated [REDACTED] were presented. It was noted that Claimant's GAF was 56. It was noted that Claimant reported an improved mood with help of therapy and visiting his sister.

Mental health agency progress notes (Exhibits 58-59) dated [REDACTED] were presented. It was noted that Claimant was uninterested in meeting people. Claimant's GAF was noted to be 52.

Mental health agency progress notes (Exhibits 56-57) dated [REDACTED] were presented. It was noted that Claimant was pursuing SSA benefits.

Mental health agency progress notes (Exhibits 54-55) dated [REDACTED] were presented. It was noted that Claimant had difficulty getting out of bed. It was noted that Claimant was trying to establish a daily routine.

Mental health agency progress notes (Exhibits 49-51) dated [REDACTED] were presented. It was noted that Claimant reported difficulties with negative thoughts. Claimant's GAF was noted to be 50.

Mental health agency progress notes (Exhibits 43-46) dated [REDACTED] were presented. It was noted that Claimant reported depression. It was noted that Claimant reported social isolation except when with his sister.

Mental health agency progress notes (Exhibits 37-42) dated [REDACTED] were presented. It was noted had Medicaid and could obtain medications. It was noted that Claimant reported sadness when alone.

Mental health agency progress notes (Exhibits 35-36) dated [REDACTED] were presented. It was noted that Claimant enjoyed a recent vacation with sister. It was noted that when Claimant is more active he is less depressed.

Mental health agency progress notes (Exhibits 33-34) dated [REDACTED] were presented. It was noted that Claimant reported ongoing depression but some days "are not that bad". It was noted that Claimant attended therapy 2 times per week. It was noted that Claimant spent most of his time with his sister. Claimant's GAF was noted to be 58.

Mental health agency progress notes (Exhibits 219-231; 335-372) from 7/2013-8/2013 were presented. On [REDACTED], it was noted that Claimant reported intrusive thoughts. On [REDACTED], it was noted that Claimant finished a screenplay which he was working on for 10 years.

A Medication Review Note (Exhibits 213-214) dated [REDACTED] from a treating psychiatrist was presented. It was noted that Claimant reported insomnia and paranoia.

Hospital documents (Exhibits 381-396) from an admission dated [REDACTED] were presented. It was noted that Claimant presented after intentionally taking an overdose of Ativan. It was noted that Claimant received various psycho-therapeutic medications. A discharge diagnosis of major depression (recurrent) was noted. A discharge date of [REDACTED] 3 was noted.

Various mental health agency progress notes (Exhibits 89-158; 198-212; 215-218) from 9/2013-12/2013 were presented. It was regularly noted that Claimant reported that anti-depressants were not helping his mood. On [REDACTED], it was noted that Claimant was angry because his care coordinator changed. On [REDACTED], it was noted that Claimant was angry that his sister wants him to find a part-time job. On [REDACTED], it was noted that Claimant thought that his sister was putting too much pressure on him to find a job. On [REDACTED], a no-suicide plan was discussed. On [REDACTED], it was noted that Claimant enjoyed his session while playing 9-ball with his counselor. On [REDACTED], it was noted that Claimant enjoyed going bowling with his case manager. On [REDACTED], Claimant's GAF was noted to be 45, in part, due to feeling overwhelmed by an upcoming SSA hearing. On [REDACTED], it was noted that Claimant reported not having many outlets but enjoyed bowling with his therapist. On [REDACTED], it was noted that Claimant displayed good insight and good judgment. On [REDACTED], Claimant's GAF was noted to be 45. On [REDACTED], it was noted that Claimant visited his sister daily and that his sister was moving out-of-state to get away from Claimant.

Mental health agency progress notes (Exhibits 259-291) from 12/2013-2/2014 were presented. On [REDACTED], it was noted that Claimant was preoccupied and has thought blocking. Intrusive thoughts of homosexuality and violence were noted.

Various mental health agency notes (Exhibits 235-258) dated [REDACTED] were presented. Claimant's psychiatrist noted that Claimant reported paranoia and intrusive homosexual

thoughts and that Claimant running out of meds. It was noted that Claimant did not want to take meds out of fear of "sexual S.E.". It was noted that Claimant wants to feel less suicidal. It was noted that Claimant's thought process included compulsions, obsessions, and paranoia. Claimant's concentration was noted as normal and judgment was noted as good. It was noted that Claimant had no suicidal ideation or behaviors. It was noted that Claimant was capable of going to the store, mall, movies, restaurants, doctor, and post office.

Mental health agency progress notes (Exhibits 159-195; 294-334) from 2/2014-5/2014 were presented. On [REDACTED], it was noted that Claimant threatened to buy a gun and shoot himself. On [REDACTED] 4, it was noted that Claimant had intrusive thoughts. On [REDACTED], Claimant reported intrusive thoughts; it was noted that Claimant was observed to spend the session staring and jerking. On [REDACTED], Claimant reported bad intrusive thoughts. On [REDACTED], it was noted that Claimant did not know where he would live after the sale of his father's home. On [REDACTED] it was noted that Claimant felt insecure because it was warm and he had fewer layers of clothes as protection. On [REDACTED], Claimant's medications included Zoloft, Geodon, Klonopin, Wellbutrin, Lopressor, and Ambien; it was noted that Claimant had a nice weekend with his sister. On [REDACTED], it was noted that Claimant reported zero income and bad intrusive thoughts.

Physician office visit documents (Exhibits 20-23) dated [REDACTED] were presented. Diagnoses of schizophrenia, cerumen infection, hypogonadism, hearing loss, tremor, and erectile dysfunction were noted. An unspecified hearing loss was noted.

A Psychiatric Evaluation (Exhibits 13-16; 29-32) dated [REDACTED] was presented. The form was completed by a treating psychiatrist. It was noted that Claimant experienced panic attacks, anxiety attacks, intrusive thoughts, depression, and a desire to isolate. Noted observations included the following: orientation x3, unremarkable motor status, blunted affect, anxious mood, paranoid ideation, unremarkable perception, unremarkable memory, poor insight, and poor judgment. A 10 year history of OCD was noted. An Axis I diagnosis of paranoid schizophrenia was noted. Claimant's GAF was noted to be 45.

A psychiatrist letter (Exhibit 28) dated [REDACTED] was presented. Claimant's psychiatrist stated that Claimant was unable to work.

Claimant alleged disability exclusively based on psychological impairments. Claimant's mental health treatment documentation sufficiently verified long-term restrictions in Claimant's judgment, social abilities, and concentration. It is found that Claimant has severe impairments 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.

Claimant alleged disability, in part, based on schizoaffective disorder. The SSA listing for schizoaffective disorders reads as follows

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

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 or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
4. Emotional withdrawal and/or isolation;

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 schizophrenic, paranoid, or other psychotic 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.

Claimant's sister testified that Claimant experiences trance-like moments. Claimant testified that he regularly experiences intrusive thoughts concerning homosexuality. The

testimony was credible and consistent with presented documents. It is found that Claimant meets Part A of the above listing.

Turning to Part B of the above listing, specific restrictions were not provided. Ample evidence was present to infer the degree of restrictions.

SSA requires that medical opinions come from an “acceptable medical sources” (see SSR 06-03p). Examples of acceptable medical sources are psychiatrists or licensed psychologists. Nurse practitioners and counselors are not acceptable medical sources.

Claimant’s GAF was consistently noted as between 41-50. Not all of the provided GAFs came from Claimant’s psychiatrist, but some were. 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).” A consistent GAF between 41 and 50 is highly indicative of someone with marked restrictions.

Paranoid schizophrenia is understood to be an incurable and difficult to treat mental health problem. The diagnosis, by itself, is consistent with finding that Claimant has marked restrictions.

Documentary evidence and testimony was suggestive that Claimant has substantial concentration and social obstacles. One example was Claimant’s inability to attend group therapy or buy food. As it happened, Claimant’s psyche appeared to improve with medication and therapy. Still, Claimant showed some difficulties with judgment and life coping. This evidence was modestly suggestive of marked restrictions.

The evidence was suggestive that Claimant independently performs daily activities. Claimant drives and does his own shopping. Claimant attended therapy without any assistance from his sister. This evidence was suggestive that Claimant’s restrictions were not marked.

At times, the evidence was suggestive that Claimant was a lonely guy that would benefit from the routine of employment. Though Claimant had some concentration and social interaction problems, he seemed to perform well when out socially with his counselors. This consideration was suggestive that Claimant could perform employment and that he did not have marked restrictions.

It was somewhat staggering that Claimant had not worked in the previous 15 years. Claimant testified that he spent a portion of that time working on a screenplay. It was uncertain whether Claimant’s lack of employment was due to psychological impairments or enabling by his family.

Overall, the evidence tended to be very mixed concerning disability. The deciding factor was Claimant's history of suicide attempts. Claimant's suicide ideation before beginning therapy was concerning. Claimant's suicide attempt in the midst of therapy was very concerning.

Based on the presented evidence, it is found that Claimant meets the requirements for Listing 12.03. Accordingly, Claimant is a disabled individual and it is found 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 SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility 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: **11/7/2014**

Date Mailed: **11/7/2014**

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 48909-07322

CC:

