

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

IN THE MATTER OF:

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Reg. No.: 14-013789
Issue No.: 2009
Case No.: ██████████
Hearing Date: November 19, 2014
County: WAYNE-15 (GREYDALE)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in-person hearing was held on November 19, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. The Claimant's AHR, ██████████, appeared on behalf of the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker/ Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or 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 18, 2013, Claimant submitted an application for public assistance seeking MA-P benefits.
2. On February 1, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. The Department sent Claimant a Notice of Case Action on February 6, 2014 denying the application based on MRT's finding of no disability.
4. On August 14, 2014, the Department received Claimant's timely written request for hearing.

5. Claimant alleged mental disabling impairments due to sever major depressive disorder with psychotic features.
6. The Claimant alleged physical disabling impairments including asthma, hypertension and left foot drop.
7. At the time of hearing, Claimant was 45 years old with a January 12, 1969 birth date; he was 6'3" in height and weighed 230 pounds.
8. Claimant has a 9th grade education and attended special education classes. The Claimant did obtain a GED.
9. Claimant has an employment history as a logistics quality control for a manufacturer inspecting parts. The Claimant last worked in February 2003.
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 impariment 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.

MA-P and SDA benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 260); BEM 261 (July 2013), p. 1. In order to receive MA benefits based upon disability, Claimant must be disabled as defined in Title XVI of the Social

Security Act. 20 CFR 416.901. Disability for MA purposes 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).

In order to determine whether or not an individual is disabled, federal regulations require application of a five-step sequential evaluation process. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider (1) whether the individual is engaged in substantial gainful activity; (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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)

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is substantial gainful activity (SGA), then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant at the time of the hearing was not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under step 1 and the analysis continues to step 2.

Step Two

Under step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may 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). However, under the *de minimus* standard applied at step 2, an impairment is not severe only if it is a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s).

In this case, Claimant alleged mental disabling impairments due to sever major depressive disorder with psychotic features.

The Claimant alleged physical disabling impairments including asthma, hypertension and left foot drop.

A summary of the medical evidence presented follows.

The Claimant was seen by a consultative doctor in Emergency Medicine on December 8, 2014. The impression was the Claimant has asthma and currently using an inhaler, and also notes multiple admissions. The Claimant's hypertension is under fair control. Left leg injury – the examinee has a history of left leg injury with nerve damage and left foot drop. During the exam, the doctor noted that Claimant drags his left leg. The Claimant was rated as stable and noted the Claimant could lift at most 20 pounds occasionally, stand and or walk less than 2 hours in an 8 hour workday, and could sit 6 hours in an 8 hour work day. No limitations were imposed with the use of hands or arms. The exam record also noted that Claimant would have difficulty with stairs.

At the time of the hearing, the Claimant was receiving treatment for his depression for at least two years. A mental Residual Functional Capacity Assessment was completed on December 14, 2014 by the Claimant's treating doctor. The Claimant was found markedly limited in all categories of social Interaction and markedly limited in his adaptation to change in the work setting. The Claimant was also markedly limited in understanding and memory with respect to his ability to understand and remember one or two step instructions and detailed instructions. The Claimant was markedly limited in all categories in sustained concentration and persistence except for a moderate limitation for making simple work related decisions. There was some question regarding whether a doctor completed the form, and evidence presented indicates that Dr. Snell, who signed the form, is a doctor of psychiatry.

The Claimant began treatment on November 25, 2013 and presented with depression. The initial evaluation noted bunted affect, diagnosis was major depressive disorder, recurrent severe with psychotic features with a GAF score of 55

The Claimant was admitted to the psychiatric ward on October 9, 2013 with a diagnosis of major depression and psychosis. The Claimant presented with suicidal thoughts. The Claimant was released after 5 days. At the time of his admission, the Claimant's psychiatric evaluation was mood disorder. While hospitalized, the Claimant reported hearing voices. When initially evaluated, the Claimant was given a GAF score of 26. The Claimant was taken for treatment by the staff of the [REDACTED] after thoughts of killing self and his family. Auditory hallucinations were reported and exhibited poor judgment and no insight. On admission to the hospital, the GAF was 26 and Mood Disorder was the diagnosis. While evaluated, the Claimant reported another suicide attempt with a gun, which misfired. On discharge, the Claimant was improved, he was sleeping well and had an appetite.

During the hearing, the Claimant credibly testified to the following symptoms. The Claimant has no family or friends, and avoids people and family. The Claimant suffers from racing thoughts, which he described as anxiety. He reported both auditory and visual hallucination. The Claimant sleeps most of the day, reported a very poor appetite and is not hungry. The Claimant reported difficulty focusing, and it is noted that during the hearing he had difficulty focusing on the questions presented to him by the

undersigned. The Claimant also testified that he is often angry, does not trust anyone, and reported at least weekly crying spells.

As summarized above, Claimant has presented medical evidence establishing that he does have some mental and physical limitations on his ability to perform basic work activities. In consideration of the *de minimis* standard necessary to establish a severe impairment under step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments as a result of his mental condition that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under step 2, and the analysis will proceed to step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual'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 an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the objective medical evidence presented of the diagnosed mental disorders of mood disorder and major depressive disorder, severe recurrent with psychotic features, Listing 12.00, which encompasses adult mental disorders, particularly Listing 12.04 (affective disorders) was reviewed. The Listing requires the following conditions be met or their medical equivalent:

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

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

After a review of the Listing, it is determined that the Claimant's medical evidence has satisfied Listing 1.04 A1. a,b,c,e,f and g, and B, 1.2.3. Deference was given to the opinion and evaluation of the Claimant's treating psychiatrist.

Therefore, based upon the foregoing analysis, it is determined that the Claimant is found disabled at Step 3 with no further analysis required.

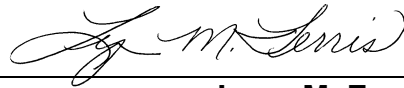
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and/or SDA benefit program.

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. The Department is ordered to process the Claimant's November 18, 2013 application for Medical Assistance, and determine the Claimant's non-medical eligibility.
2. A review of this case shall be conducted in February 2016.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/23/2015**

Date Mailed: **2/23/2015**

LMF / tm

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:

[REDACTED]
[REDACTED]
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