

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

IN THE MATTER OF:



Reg. No.: 2014-12715
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 5, 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 May 5, 2014, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED] 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 denied Claimant's application for Medical Assistance (MA) 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 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. Claimant presented new medical documents (Exhibits A1-A19) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
11. On [REDACTED], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 51-year-old male with a height of 6'3" and weight of 203 pounds.
15. Claimant has a relevant history of alcohol abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
18. Claimant alleged disability based on impairments and issues including memory lapses, bipolar disorder, depression, anxiety, and post-traumatic stress disorder (PTSD) related to abuse.

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 of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

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 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

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 treatment documents (Exhibits 165-207) were presented. The records verified that Claimant attended psychological medication reviews (typically one per month) from [REDACTED]

A Comprehensive Biopsychosocial Assessment (Exhibits 93-100; 158-164) dated [REDACTED] was presented. The assessment was noted as completed by a social worker and psychiatrist from a treating mental health agency. It was noted that Claimant had a drinking problem at age 7 (elsewhere it was noted that Claimant began using alcohol at age 17 (see Exhibit 204)). It was noted that Claimant, as a child, was repeatedly molested by a neighborhood boy. It was noted that Claimant reported no previous psychiatric hospitalizations. Claimant's last reported alcohol use was in [REDACTED]. It was noted that Claimant did not report hallucinations. Noted observations of Claimant included the following: intact memory, impaired judgment, impaired insight, minimal level of impairment, average intelligence, normal thought process, irritable mood, and

appropriate affect. Axis I diagnoses of bipolar disorder and alcohol dependence were noted.

Various psychological treatment records (Exhibits 11-92) were presented. The records ranged in date from [REDACTED] through [REDACTED]. On [REDACTED], Claimant medications included Celexa, Depakote, Seroquel, Clonidine, and Geodon. It was consistently noted that Claimant reported poor sleep. Claimant's mental status was noted as either maintaining or improving. Claimant was noted as medication complaint for all appointments. On [REDACTED], it was noted that Claimant missed his appointment.

Hospital documents (Exhibits 120-135) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left hip pain, ongoing for 2 weeks. An impression of avascular necrosis was noted following hip radiology. It was noted that Claimant had full hip range of motion and that he moved without difficulty.

Hospital documents (Exhibits 136-150) from an encounter dated [REDACTED] were presented. It was noted that conservative treatment for avascular necrosis failed. It was noted that Claimant underwent a left total hip arthroplasty.

Hospital documents (Exhibits 101-119) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of a chronic buttocks abscess. It was noted that antibiotics were administered. An incision and drainage was noted as performed. An assessment of stable COPD was also noted. Following a chest x-ray, an impression of no acute process was noted.

A consultative examination report (Exhibits 6-10) dated [REDACTED] was presented. It was noted that Claimant was victim of childhood sexual abuse and parental verbal abuse. It was noted that Claimant was supposed to be in outpatient psychiatric treatment but did not attend due to a lack of transportation. A history of alcohol abuse was noted. It was noted that Claimant reported not drinking in the past 2 years. It was noted that Claimant heard voices. Noted observations of Claimant included the following: adequate contact with reality and logical stream of mental activity. It was noted that Claimant had difficulty with calculations. Axis I diagnoses of alcohol abuse (in remission) and bipolar disorder were noted. Claimant's GAF was noted to be 51.

A Comprehensive Biopsychosocial Assessment (Exhibits A1-A8) dated [REDACTED] was presented. The assessment was signed by a social worker and psychiatrist. It was noted that Claimant wanted to begin sessions after a 4-month layoff. It was noted that Claimant was in full remission from alcohol abuse. Noted observations of Claimant included the following: orientation x3, impaired memory, intact judgment, intact insight, normal thought process, normal attention, appropriate affect, and depressed mood. Axis I diagnoses of bipolar disorder and alcohol dependence were noted. Claimant's GAF was noted to be 50. Noted goals included weekly counseling and monthly medication reviews.

A Psychiatric Evaluation (Exhibits A9-A15) dated [REDACTED] was presented. The evaluation was completed by a psychiatrist with an unspecified history of treating Claimant. It was noted that Claimant stopped attending therapy due to transportation problems and he stopped taking medication after he lost insurance. It was noted that Claimant reported the following symptoms: sleep difficulties, moodiness, hypervigilance, concentration difficulties, forgetfulness, easily overwhelmed, and low self-esteem. Noted observations of Claimant included: fair attention, fair judgment, good insight, logical and goal directed thought process, constricted and anxious affect, and orientation x3. Claimant's GAF was noted to be 49. A Person Centered Plan of Service (Exhibits A12-A16) from Claimant's treating mental health agency was also presented, but not notable.

Hospital documents (Exhibits A17-A19) dated [REDACTED] were presented. It was noted that Claimant reported increased blood pressure. Claimant denied shortness of breath but reported a mild headache. A review noted that all systems were negative for problems. A plan to follow-up with a physician was noted.

Presented records documented that Claimant receive treatment for hip pain. It was documented that Claimant received surgical correction. The absence of post-surgery treatment records was indicative that surgery corrected Claimant's pain complaints. Claimant testified that he does not receive any treatment for physical problems. It is found that Claimant does not have a severe physical-based impairment.

Claimant alleged disability based on various psychological problems. Claimant's testimony cited bipolar disorder, PTSD, anxiety, and depression as diagnoses for which he receives treatment. Claimant testified that he suffers racing thoughts and experiences repeated flashbacks of childhood abuse. Claimant's testimony was consistent with the presented records. The records also established that Claimant's impairments lasted at least since [REDACTED], the first month of MA benefits sought.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, Claimant established having a severe impairment and the disability analysis may move 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 appears to be anxiety related to childhood abuse. Anxiety is a symptom of anxiety disorders which are covered by Listing 12.06 which reads as follows:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master

symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

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 both A and C are satisfied.

- A. Medically documented findings of at least one of the following:
1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
 2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
 3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
 4. Recurrent obsessions or compulsions which are a source of marked distress; or
 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home.

Claimant testified that he has not been hospitalized for psychiatric problems. Claimant's testimony was consistent with some treatment records. In a consultative examination report, it was noted that Claimant reported a psychiatric hospitalization from 3 years prior. The examining psychiatrist noted that the hospitalization occurred after "took a lot of his mother's Soma" medication (see Exhibit A9). If the single hospitalization occurred, it would be insufficient to establish repeated episodes of decompensation, each of extended duration.

On [REDACTED], Claimant's GAF was 51. On [REDACTED], Claimant's GAF was noted to be 50. On [REDACTED], Claimant's GAF was noted to be 49. 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 relatively low GAF scores are indicative that Claimant suffers marked restrictions. It must be determined in what area, if any, that Claimant has marked restrictions.

There was little evidence to suggest that Claimant has any problems performing ADLs. Examples of such evidence would be poor hygiene or unkempt appearance. Presented records did not document any notable examples that Claimant is unable to complete daily activities.

The most recently presented evidence noted that a psychiatrist determined that Claimant had intact recent memory, intact intermediate memory, and intact remote memory (see Exhibit A10). The evidence was not persuasive in finding that Claimant had marked restrictions in concentration.

There was also little evidence that Claimant had social difficulties. There was an occasional reference in treatment records to a complaint of irritability and/or mood swings. Overall, the evidence was not suggestive that Claimant has marked social restrictions. There was similarly little evidence that Claimant is unable to independently function outside of his home.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

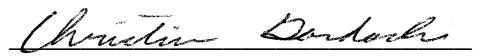
Claimant's earnings history (Exhibits 233-237) was presented. Claimant testified that he spent several years as a machine operator. Claimant also testified that he spent 3 months in 2011 as a quality control inspector. Claimant testified that he lost one or both jobs due to his alcohol abuse. Claimant is now sober. Though Claimant suffers anxiety

and flashbacks of childhood trauma, the evidence supports finding that Claimant has the mental functional capacity to perform past relevant employment.

It is found that Claimant can perform his past employment and is not a disabled individual. Accordingly, it is found that DHS properly 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 properly denied Claimant's MA benefit application dated [REDACTED] based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 7/24/2014

Date Mailed: 7/24/2014

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:

