

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20146907
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: February 26, 2014
County: Kent County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 26, 2014. Claimant personally appeared and provided testimony. The Department of Human Services (Department) was represented by [REDACTED] [REDACTED] an eligibility specialist, and [REDACTED] [REDACTED] a family independence manager, both with the Department's Kent County office.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) 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 July 2, 2013, Claimant submitted an application for public assistance seeking MA-P benefits and SDA benefits.
2. On September 5, 2013, the Medical Review Team (MRT) found Claimant not disabled. (Exhibit A, pp. 38-39)
3. On September 5, 2013, the Department notified Claimant of the MRT determination.

4. On October 10, 2013, the Department received Claimant's timely written request for hearing.
5. On January 11, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled. (Exhibit B, pp. 1-2)
6. Claimant alleged mental disabling impairments due to bipolar disorder and schizophrenia.
7. At the time of hearing, Claimant was 37 years old with a [REDACTED] birth date; was 5'2" in height; and weighed approximately 145 pounds.
8. Claimant obtained his GED and has a limited employment history that includes being a bagger at a grocery store 10 years ago.

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 found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Tables (RFT).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant

has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured

settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not working therefore is not involved in substantial gainful activity. Accordingly, Claimant is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and

6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due to bipolar disorder and schizophrenia.

Claimant's medical records indicate that he was seen on February 23, 2010 for an evaluation pursuant to Disability Determination Services. At that time, Claimant presented with questionable hygiene and appeared quite unkempt. He presented with questionable reality contact and it was unclear as to what degree his reality contact was an attempt to exaggerate his mental health symptoms. He was very vague in some situations and volunteered a great deal of information in others, and was quite selective in the information he provided. He did present with tendencies towards exaggeration of symptoms. His thoughts were consistently logical, coherent, and goal directed. His immediate, recent, and past memory recollection was below average. His diagnoses were to rule out Psychotic Disorder, NOS, and Malingering and his current GAF was 60.

On June 18, 2013, Claimant was seen by his treating physician, [REDACTED] D.O., and presented as well groomed and appropriate, and oriented to person, place, time, and situation. His behavior was described as agitated. His speech was appropriate and psychomotor behaviors were unremarkable. His mood was irritable, depressed and equable affect –however, he reported some areas of improvement, a little more energy at times and having a better appetite. His memory was intact. His intellect was average and he was cooperative and discouraged. His reasoning and impulse control were fair and his judgment and insight were poor. His thought processes were logical and concrete. His diagnosis was schizoaffective disorder (Axis I) and tobacco use (Axis II). He was not engaged in support services. It was recommended that his current medication regimen be continued and exercise and dietary changes and increased activity were encouraged.

On July 2, 2013, Claimant was seen by his treating physician, [REDACTED] D.O., for purposes of completion of a Psychiatric/Psychological Examination Report (DHS-49-D)

and a Mental Residual Functional Capacity Assessment (DHS-49-E). At that time, Claimant presented punctually with cooperative attitude and was well groomed. It was noted that he has experienced ongoing depression, sleep disturbance and intermittent suicidality although his last visit was with mild improvement. He continued to take medications with support of others although he had difficulty understanding direction at times. His daily functioning was observed to be isolative and avoidant and he lacked energy and motivation to engage and had poor daily functioning. He was diagnosed with schizoaffective disorder and tobacco dependence (Axis IA) and his current GAF and his GAF last year were noted at 50 (with a range of 41-50 denoting serious symptoms of impairment).

In the July 2, 2013 Mental Residual Functional Capacity Assessment, it was noted that Claimant was not significantly limited in his ability to remember locations and work-like procedures, understand and remember one or two-step instructions or detailed instructions, carry out simple, one or two-step instructions or detailed instructions or maintain attention and concentration for extended periods. Claimant was also not significantly limited in his ability to work in coordination with or proximity with others without being distracted by them, or his ability to make simple work-related decisions, or his ability to be aware of normal hazards and take appropriate precautions, or his ability to travel in unfamiliar places or use public transportation. Claimant was moderately limited in his ability to do the following: perform activities within a schedule, maintain regular attendance and sustain an ordinary routine without supervision; complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public; ask simple questions or request assistance; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; respond appropriately to change in the work setting; and set realistic goals or make plans independently of others.

Claimant testified that he has been on medication for schizophrenia for seven years, he sees his physician monthly and he sees a therapist every two weeks. He testified that he rarely leaves the house and he hears voices daily. Since taking the Seroquil, he indicated that he is able to sleep better. He has no interactions with his family or friends, except his grandfather and his mother. Claimant indicated that his mother visit. He does not know how far he can walk but he is able to sit for 30 minutes at a time. He performs no housekeeping duties and a typical day consists of him sitting in his house and fighting the voices in his head.

As summarized above, the Claimant has presented some medical evidence confirming diagnosis of a schizophrenic affective disorder. The evidence shows that he does have some moderate mental limitations on his ability to perform basic work activities. The

degree of functional limitation of the Claimant's activities, social function, concentration, persistence, or pace, is moderate and the degree of limitation in the fourth area (episodes of decompensation) is a 2. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms treatment/diagnosis of schizophrenic affective disorder.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning and are defined in Listing 12.03. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements of 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 a 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 durations
- 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 changed 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.

In this case, the evidence confirms treatment/ diagnosis of schizophrenic affective disorder. The evidence reveals, in part, that Claimant's behavior has been at times isolative and avoidant and he lacked the energy and motivation to engage and had poor daily functioning. Additionally, the records show some moderate limitations in the area of social interaction, but that Claimant is not significantly limited in his ability to remember locations and work-like procedures, understand and remember one or two-step instructions or detailed instructions, carry out simple, one or two-step instructions or detailed instructions or maintain attention and concentration for extended periods. Claimant was also not significantly limited in his ability to work in coordination with or proximity with others without being distracted by them, or his ability to make simple work-related decisions, or his ability to be aware of normal hazards and take

appropriate precautions, or his ability to travel in unfamiliar places or use public transportation.

Moreover, Claimant's most recent Global Assessment of Functioning (GAF) score was 50 (July 2, 2013), establishing that his functioning is on the cusp between serious impairment and moderate difficulty in social, occupational, or school functioning. To be sure, a GAF of 41-50 reveals serious symptoms OR any serious impairment in social, occupational, or school functioning, while a GAP score of 51-60 indicates moderate symptoms (e.g., flat affect and circumlocutory speech, occasional panic attacks) or moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).

In light of the foregoing, particularly the fact that the evidence does not demonstrate that Claimant has any marked restriction of activities of daily living, or marked difficulties in maintaining social functioning, or marked difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended durations, it cannot be said that Claimant's impairments meet, or are the medical equivalent thereof, a Listed impairment within 12.00 as detailed above. In this regard, Claimant's testimony regarding the extent to which his symptoms inhibit his ability to function must be properly weighed against the backdrop of the objective medical evidence, including the February 2010 disability determination assessment, wherein it was observed that Claimant presented with tendencies towards exaggeration of symptoms. Accordingly, the Claimant is found not disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI 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.

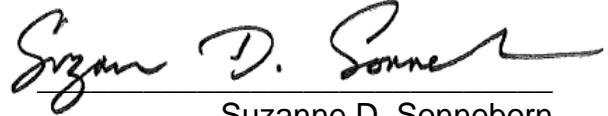
In this case, the Claimant is found not disabled for purposes of the MA-P program; therefore, he is found not disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs. Accordingly, it is ORDERED:

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The Department's determination is **AFFIRMED**.



Suzanne D. Sonneborn
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 13, 2014

Date Mailed: March 14, 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:

20146907/SDS

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

SDS/hj

cc:

