

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016375
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: January 14, 2015
County: Wayne (49)

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 January 14, 2015, from Detroit, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's case manager, and [REDACTED], Claimant's care provider, testified on Claimant's behalf. 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 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 1-2).
4. On [REDACTED] DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 39-41) 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 30 year old male with a height of 5'6" and weight of 260 pounds.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's highest education year completed was the 8th grade.
9. Claimant has a history of semi-skilled employment, with no known transferrable job skills.
10. Claimant alleged disability based on restrictions related to Human Immunodeficiency Virus (HIV), lumbar pain, swollen left foot, headache, right shoulder pain, and bipolar disorder.

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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant noted special arrangements in order to participate in the hearing. Claimant testified that he wanted his care provider to testify on his behalf. Claimant's request was granted and the hearing was conducted accordingly.

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 day period of disability.

SGA means a person does the following: performs significant duties, 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 SGA. *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 SDA application submission; 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 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 presented medical documentation.

A Psychiatric Evaluation dated [REDACTED] (Exhibits 28-29) from a treating psychiatrist was presented. Noted observations of Claimant included the following: cooperative, normal affect, normal psychomotor activity, normal speech, adequate concentration, adequate impulse control, adequate judgment, and orientation x3. A history of visual hallucinations and suicidal ideation was noted. It was noted that Claimant reported feelings of worthlessness and hallucinations causing him to attempt to set fire to his residence following a recent psychiatric hospital discharge. A history of drug abuse and

family problems were noted. It was noted that Claimant was not a current drug user. Diagnoses of bipolar disorder and antisocial personality were noted. Claimant's GAF was not apparent.

A partially-completed Psychiatric/Psychological Examination Report (Exhibits 24-25) was presented. Only the first and second pages of the three-page DHS form were presented; notably absent was the form author's name and credentials. The date of form completion was also absent, though it is presumed to have been completed after [REDACTED], the date that DHS created the form. A 2013 psychiatric hospitalization was noted. Noted observations of Claimant included the following: unkempt hygiene, orientation x3, hyperverbal speech, and restlessness. A history of seeing and hearing hallucinations related to death was noted. Diagnoses of bipolar disorder and anti-social personality disorder were noted. Claimant's GAF was noted to be 35.

A Medical Examination Report (Exhibits 12-14) dated [REDACTED] was presented. The form was completed by a nurse practitioner (NP) with an approximate 3 year history of treating Claimant. Diagnoses included the following: symptomatic HIV infection, depression, chronic low back pain, bipolar disorder, anti-social problems, personality disorder, and suicidal ideation. An impression was given that Claimant's condition was stable. It was noted that Claimant needed assistance with shopping, cooking, dressing, and bathing. Claimant's NP opined that Claimant was restricted to less than 2 hours of standing and/or walking over an eight-hour workday. Restrictions to Claimant's sitting, repetitive arm actions, and repetitive leg actions were not noted. Claimant was restricted to occasional lifting/carrying of 20-25 pounds, never 50 pounds or more. Claimant's memory, concentration, and social interaction abilities were noted as limited due to psychological diagnoses.

A Medical Report on Adult with Allegation of HIV (Exhibits 17-23) [REDACTED] was presented. The form was completed by Claimant's NP. Infections and neurological abnormalities were not noted to be problematic for Claimant. Marked psychological restrictions were noted to be better evaluated by a mental health provider.

Hospital documents (Exhibits A1-A3) from an admission dated [REDACTED] were presented. It was noted that Claimant was treated for a pulmonary embolism. Treatment details were not apparent. A discharge date of [REDACTED] was noted.

Physician office visit documents (Exhibits 3-6) dated [REDACTED] were presented. It was noted that Claimant presented for pulmonary embolism treatment. Complaints of headache, anxiety, and depression were noted. It was noted that Claimant recently went to the hospital with dyspnea complaints; Claimant reported feeling better since hospital treatment. Claimant's CD4 count was noted as 480. Active medications included citalopram, Seroquel, alprazolam, Prezista, Truvada, Novir, Coumadin, Lovenox, and hydrocodone-acetaminophen.

A Medical Examination Report (Exhibits 15-16) dated [REDACTED] was presented. Only the first and third pages of the three page DHS form were presented. The form was completed by an internal medicine physician with an approximate 10 month history of treating Claimant. Claimant's physician listed diagnoses of PE, HIV, bipolar disorder, schizo-affective disorder, anti-social personality disorder, and suicidal thoughts. It was noted that Claimant can meet household needs. Restrictions to Claimant's memory, concentration, social ability, and ability to follow simple instructions were noted as limited.

Claimant testified that he has a history of multiple suicide attempts. Claimant's caretaker and case manager testified that Claimant has a history of erratic behavior such as mood swings. The testimony was consistent with diagnoses of bipolar disorder and antisocial personality. Claimant's psychiatric treatment history and testimony was consistent with restrictions to Claimant's ability to maintain concentration and socially interact. Claimant's restrictions were established to have lasted at least since 2013, the year Claimant was psychiatrically hospitalized and psychiatric treatment was first verified.

It is found that Claimant has severe impairments to performing basic work activities for a period of 90 days or longer. Accordingly, it is found that Claimant has a severe impairment and the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be bipolar disorder. Bipolar disorder is an affective disorder covered by Listing 12.04 which reads as follows:

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

- 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

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 affective 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.

Starting with Part A, symptoms of anhedonia, concentration difficulties, hallucinations and suicidal ideation were verified as ongoing obstacles for Claimant. Claimant meets Part A of the affective disorder listing.

Part B requires an analysis of the degree of Claimant's restrictions. Claimant's psychiatrist submitted documentation concerning the severity of Claimant's mental health.

A Mental Residual Functional Capacity Assessment (Exhibits 26-27) dated [REDACTED] was presented. The assessment was signed by a treating psychiatrist. Claimant's psychiatrist found Claimant to be markedly restricted in the following activities:

- Remembering locations and other work-like procedures
- Understanding and remembering detailed instructions
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Sustaining an ordinary routine without supervision
- Working in coordination or proximity to others without being distracting
- Completing a normal workday without psychological symptom interruption
- Interacting appropriately with the general public
- Accepting instructions and responding appropriately to criticism
- Getting along with others without exhibiting behavioral extremes
- Maintaining socially appropriate behavior and adhering to general cleanliness standards
- Responding appropriately to changes in the work setting
- Being aware of normal hazards and taking appropriate precautions
- Setting realistic goals or making plans independently of others.

The above-cited restrictions are consistent with a person with a recent psychiatric hospitalization, hallucinations, and suicidal ideation. The above restrictions were also consistent with testimony from Claimant's care provider and case manager, who each stated that Claimant's mood is very erratic and that Claimant has difficulties performing tasks himself. This consideration supports accepting psychiatrist-provided restrictions as accurate.

The above-cited restrictions are consistent with Claimant's GAF of 35. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF of 31-40 is described as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." Claimant's GAF cannot be given significant weight because it was provided by an unknown person with unknown credentials. Though Claimant's GAF cannot be given significant weight, it is consistent with numerous marked restrictions. This consideration slightly supports finding that Claimant's psychiatrist's imposed restrictions were accurate.

The above restrictions are likely related to, in part, Claimant's medical history. It was verified that Claimant has HIV, back pain, and shoulder pain. It is not unusual for persons with complex medical histories to have difficulties regulating mood and

behavior. This consideration supports finding that Claimant's psychiatrist's imposed restrictions were accurate.

The above cited marked restrictions were consistent with presented testimony, psychiatric treatment history, and medical history. It is found that Claimant has numerous marked restrictions to work abilities.

The above-cited restrictions essentially equate to an overall marked restriction to Claimant's abilities to concentrate and socially interact. It is found that Claimant meets Part B of the above SSA listing.

By meeting parts A and B of the listing for affective disorders, Claimant meets the affective disorder listing. It is found that Claimant is a disabled individual. Accordingly, it is found that DHS erred by finding that Claimant was not disabled and by denying Claimant's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for 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 Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/23/2015**

Date Mailed: **1/23/2015**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

