

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006390
Issue No.: 2001, 4009
Case No.: [REDACTED]
Hearing Date: June 1, 2015
County: Wayne (17)

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 June 1, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included [REDACTED], specialist.

ISSUES

The first issue is whether MDHHS properly terminated Claimant's Medical Assistance (MA) eligibility.

The second issue is whether MDHHS 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. Claimant was an ongoing MA benefit recipient through the Healthy Michigan Plan (HMP).
2. On [REDACTED], Claimant applied for SDA benefits.
3. Claimant's only basis for SDA benefits was as a disabled individual.
4. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 9-10).

5. On [REDACTED], MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 4-7) informing Claimant of the denial.
6. On [REDACTED], MDHHS terminated Claimant's MA eligibility, effective May 2015.
7. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits and the termination of MA benefits.
8. As of the date of the administrative hearing, Claimant was a 45 year old male.
9. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
10. Claimant alleged disability based on mental health restrictions.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS 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).

Claimant requested a hearing, in part, to dispute a termination of MA benefits. MDHHS testimony indicated that Claimant's eligibility was terminated on [REDACTED]. MDHHS testimony stated the reason for the termination was that Claimant was none of the following: pregnant, under 21 years of age, over 65 years of age, disabled, or a caretaker to minor children.

Hearing testimony indicated that Claimant received MA as an HMP recipient. MDHHS conceded that HMP eligibility does not require that Claimant be under 21 years of age, over 65 years of age, disabled, pregnant, or a caretaker to minor children. During the hearing, MDHHS conceded that the termination of Claimant's HMP eligibility was improper. The MDHHS concession was consistent with presented facts and policy. It is found that MDHHS improperly terminated Claimant's MA eligibility.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program

pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (January 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 (January 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 MDHHS 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 testified that he mowed lawns for 2 weeks in the spring of 2015. Claimant testified that he received a total of approximately \$500 for his two weeks of work. MDHHS did not present any evidence contradicting 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 F2d 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 (Exhibits 29-32) dated [REDACTED] was presented. It was noted that Claimant presented for his annual evaluation. A history of treatment since March 2013 was noted. Reported symptoms included the following: sadness, insomnia, anxiety, low energy, hopelessness, helplessness, racing thoughts, reduced libido, poor concentration, rapid mood swings, forgetfulness, agitation, paranoia, and irritability. Assessments of Claimant included the following: unremarkable appearance, unremarkable behavior, unremarkable speech, anxious mood, paranoid thought process, unremarkable cognition, fair insight, fair judgment, and orientation x3. A diagnosis of schizoaffective disorder was noted. Claimant's GAF was noted to be 48. Outpatient services and psychotropic drugs were recommended. A guarded prognosis was noted.

A Medical Examination Report (Exhibits 19-21) dated [REDACTED] was presented. The form was completed by a treating physician with an approximate 9 day history of treating Claimant. Claimant's physician listed diagnoses of bipolar disorder, post-traumatic disorder, and psychological problems. Claimant's current medications included Desyrel, Fapnapt, and Gabapentin. An impression was given that Claimant's condition was stable. Examination findings included a blunted affect, intermittent limited insight and judgment, and intermittent auditory hallucinations. It was noted that Claimant can meet household needs. Physical restrictions were not noted.

A mental status examination report (Exhibits 11-15) dated [REDACTED] was presented. The report was noted as completed by a consultative licensed psychologist. Claimant reported that he experienced anxiety, hallucinations, depression, paranoia, suicidal ideation, and mood swings. It was noted that Claimant reported spending 1 ½ years in jail for battery. It was noted that Claimant seemed embarrassed to discuss a statement that he had magical powers. The examiner noted that Claimant was an accurate historian, displayed logical and goal directed stream of mental activity, and displayed adequate contact with reality. A diagnosis of adjustment disorder with mixed emotional features was noted. A fair prognosis was noted.

Claimant testified that he has ongoing symptoms of mood swings, fits of rage, anxiety, and panic attacks. Claimant testified that his panic attacks occur almost every day. Client testified that he even had a panic attack while waiting in the MDHHS office lobby for the hearing.

Claimant testified that he sees a psychiatrist and a therapist, each on a monthly basis. Claimant testified that he has seen a psychiatrist for last 2 years. Before that, Claimant testified that he was jailed for a year for a battery.

Claimant testified that he sometimes hears voices. When asked when he last experienced a hallucination, Claimant testified that he heard someone calling his name last night. Claimant testified that same evening that he felt paranoid and “flew off the handle” which led him to be physically restrained. Claimant also testified that he has flashbacks of his time in the service.

Claimant testified that he spends most of his days attending group therapy at his transitional housing. Client testified that he often watches television when not at therapy.

Claimant testified that he tried to work but that he was fired for not being able to follow directions. As an example, Claimant testified that his supervisor wanted Claimant working in a certain area and Claimant was found working in a different area.

Claimant's testimony was consistent with presented medical documents. Claimant's testimony and presented documents established that Claimant has difficulty with concentration and social interactions, both due to psychological disorders. Claimant's restrictions were established to have occurred at least since Claimant applied for SDA benefits. Accordingly, it is found that Claimant established having a severe impairment and the disability analysis may proceed to Step 3.

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

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

12.03 Schizophrenic, paranoid and other psychotic disorders:

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

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
1. Delusions or hallucinations; or
 2. Catatonic or other grossly disorganized behavior; or
 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
 4. Emotional withdrawal and/or isolation;
- AND
- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration;
- OR
- C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Starting with Part A, Claimant alleged, among other symptoms, regular hallucinations. Claimant's testimony was consistent with psychiatric treatment documents. It is found that Claimant meets Part A of the above listing.

Part B of the above listing considers the severity of psychological restriction. Physician statements of the severity of Claimant's psychological restrictions were provided. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

A GAF of 48 was verified. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a

person with “serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job).”

A Mental Residual Functional Capacity Assessment (Exhibits 28 and 34) dated [REDACTED] was presented. The assessment was noted as completed by a treating psychiatrist. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient’s ability to perform each of the 20 abilities as either “not significantly limited”, “moderately limited”, “markedly limited” or “no evidence of limitation”. Claimant was found markedly restricted in the ability to complete a normal workday without psychological interruptions, and the ability to interact appropriately with the public. Claimant was deemed to be markedly limited in all other abilities listed on the form.

On a Medical Examination Report dated [REDACTED], Claimant’s physician stated that Claimant was restricted in social interaction, sustaining concentration, and comprehension. In support of stated restrictions, Claimant physician noted that Claimant had flashbacks, anxiety related to social situations, anger management, intermittent limited insight and judgment during manic episodes, and difficulty maintaining concentration due to panic attacks and hallucinations.

Presented Claimant testimony and treating physician statements were supportive in finding that Claimant has marked restrictions in maintaining concentration and with social interactions. The evidence is found to verify that Claimant meets Part B of the listing for psychotic disorders.

Based on presented evidence, it is found that Claimant meets the SSA listing for psychotic disorders. Accordingly, Claimant is a disabled individual and it is found that MDHHS improperly denied Claimant’s SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Claimant’s application for SDA benefits and terminated Claimant’s HMP eligibility. It is ordered that MDHHS:

- (1) reinstate Claimant’s HMP eligibility, effective May 2015, subject to the finding that MDHHS failed to establish a basis to terminate Claimant’s eligibility;
- (2) reinstate Claimant’s SDA benefit application dated [REDACTED];
- (3) evaluate Claimant’s SDA eligibility subject to the finding that Claimant is a disabled individual for a period longer than 90 days;
- (4) initiate a supplement for any benefits not issued as a result of the improper application denial; and

(5) schedule a review of SDA benefits no sooner than one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/4/2015**

Date Mailed: **6/4/2015**

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:

