

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

IN THE MATTER OF:

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Reg. No.: 15-004220
Issue No.: 4009
Case No.: ██████████
Hearing Date: June 08, 2015
County: Macomb-District 12

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 June 8, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, Claimant's mother. Participants on behalf of the Department of Health and Human Services (Department) included ██████████ ██████████, Hearing Facilitator.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

1. On December 8, 2014, Claimant submitted an application for public assistance seeking SDA benefits (Exhibit A, pp. 76-77).
2. On December 10, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On January 5, 2015, the Department sent Claimant a Notice of Case Action/Health Care Coverage Determination Notice denying the application based on MRT's finding of no disability (Exhibit A, pp. 72-75).
4. On March 27, 2015, the Department received a timely written request for hearing signed by Claimant's mother.
5. Claimant alleged mental disabling impairment due to bipolar disorder, depression and attention deficit hyperactivity disorder (ADHD).

6. On the date of the hearing, Claimant was [REDACTED] old with a [REDACTED], birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Claimant completed [REDACTED] [REDACTED]. He testified that he could read but he could not write.
8. Claimant has an employment history of work as a furniture delivery person and as a loss prevention/security guard.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

As a preliminary matter, it is noted that the initial hearing request submitted to the Department on March 27, 2015, disputing the Department's denial of Claimant's SDA application was signed by Claimant's mother. Generally, the Michigan Administrative Hearing System (MAHS) denies hearing requests signed by unauthorized persons. BAM 600 (January 2015), p. 2. In this case, on April 14, 2015, MAHS sent Claimant a letter advising him that because the hearing request was not signed by him, it could not be scheduled. He was further advised that if a document bearing his signature was received by MAHS his hearing request could be reviewed and if a valid reason existed, a hearing would be scheduled. On May 8, 2015, MAHS received a hearing request signed by Claimant and scheduled Claimant's hearing, with the Notice of Hearing referencing the March 27, 2015 request for hearing. Because the letter from MAHS had the effect of tolling the March 27, 2015 date as Claimant's filing date until a properly signed request for hearing was received and because the March 27, 2015 request for hearing was timely filed within 90 days of the Department's January 5, 2015, Notice of Case Action denying his application, Claimant's hearing request is deemed timely and properly submitted. The merits of the issue presented, whether the Department properly denied Claimant's SDA application based on a finding that he was not disabled, are addressed.

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual

receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in substantial gainful activity (SGA);
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (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 to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

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

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

In the present case, Claimant alleges mental disabling impairment due to depression, bipolar disorder and ADHD. The medical evidence presented at the hearing was reviewed and is summarized below.

In a psychiatric evaluation dated July 21, 2014, Claimant was diagnosed with bipolar II disorder and attention-deficit/hyperactivity dis/inattentive type. The psychiatrist noted that Claimant's mood was anxious, angry, depressed, and dysphoric; his thought process involved flight of ideas; his speech was pressured; and he was agitated/shaking. His affect, thought content and attention/concentration were within normal limits. Claimant denied suicidal ideation, homicidal ideation, or psychosis. He had a history of anabolic steroid dependence in remission but denied other substance abuse. The psychiatrist concluded that Claimant had a history of mood symptoms

consistent with bipolar disorder with mixed features and comorbid ADHD, which had interfered with occupational ability and relationships. The doctor assigned Claimant a global assessment of functioning (GAF) score of 50. The doctor prescribed Trileptal and Adderall. (Exhibit A, pp. 19-23, 43-47, 60-64).

At his August 14, 2014, medication review, Claimant reported that his mood was much more stable and he was less angry. The Adderall had helped with maintaining focus and completing tasks. (Exhibit A, pp. 48-51.) At the September 25, 2014, medication review, Claimant reported to his psychiatrist that he had run out of Trileptal 11 days earlier and both he and his mother reported that he had more stable mood and reduced racing thoughts when on the Trileptal though he continued to have trouble focusing when taking it. The Adderall helped with both focus and energy. (Exhibit A, pp. 24-28, 52-57, 65-69.)

On December 4, 2014, Claimant's psychiatrist completed a psychiatric/psychological examination report, DHS 49-D, showing Claimant's diagnoses of bipolar II disorder; attention-deficit/hyperactivity disorder/inattention type. Claimant reported forgetfulness, inability to remember small tasks and instructions, mood swings, elevated anger, depression and anxiety. His behavior was anxious, guarded, and hypervigilant. The doctor indicated that Claimant reported taking Adderall and Trileptal as prescribed, without side effect, and doing better, with improvement across a range of symptoms with improved sleeping, decreased racing thoughts, better ability to focus, and more stable mood. The doctor noted that Claimant's attitude was cooperative; his mood was euthymic; his affect, thought process, psychomotor activities, and attention were within normal limits, and his judgment was good. The doctor indicated that Claimant's global assessment function score was 53. (Exhibit A, pp. 7-9.)

On December 4, 2014, Claimant's psychiatrist also completed a mental residual functional capacity assessment, DHS-49-E, regarding Claimant's mental impairments and how they affected his activities. The psychiatrist concluded that Claimant had moderate limitations regarding his ability to understand and remember one or two-step instructions; carry out simple one or two step instructions; sustain an ordinary routine without supervision; make simple work-related decision; interact appropriately with the general public; ask simple questions or request assistance; 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 be aware of normal hazards and take appropriate precautions. The psychiatrist concluded that Claimant had marked limitations regarding his ability to remember locations and work-like procedures; understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; work in coordination with or proximity of others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and

length of rest periods; accept instructions and respond appropriately to criticisms from supervisors; travel in unfamiliar places or use public transportation; and set realistic goals or make plans independently of others. (Exhibit A, pp. 10-11, 14-15, 70-71.)

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented, Listings 12.00 (mental disorders), particularly 12.04 (affective disorders) and 12.06 (anxiety-related disorders), were reviewed. Claimant's medical record in this case is not sufficient to support a finding that his impairments meet, or equal the severity of, any considered listing. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case, Claimant testified that he did not have any exertional limitations and alleges only nonexertional limitations due to his mental condition. For mental disorders, 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 are 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 mental 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.*

In this case, Claimant testified that, because of his mental condition, he had difficulty remembering things and concentrating. He did not like to go shopping because he felt uncomfortable in large areas but admitted that he had a strong group of friends and attended church for socialization. He also testified that, on medication, he had much better control over his anger.

The mental residual functional capacity assessment completed by Claimant's psychiatrist, coupled with Claimant's testimony, shows that Claimant has mild to moderate limitations in his activities of daily living and social functioning. While the

DHS-49E overall shows overall marked limitations on his concentration, persistence and pace, Claimant's psychiatrist indicated that Claimant had moderate limitations regarding his ability to understand and remember one or two-step instructions; carry out simple one or two step instructions; sustain an ordinary routine without supervision; make simple work-related decision; interact appropriately with the general public; ask simple questions or request assistance; 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 be aware of normal hazards and take appropriate precautions. He also indicated that Claimant's mental condition had improved with medication.

Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant has mild to moderate limitations in his activities of daily living and social functioning and, though he has marked limitations on his concentration, persistence and pace, overall he has only moderate limitations with respect to his ability to do simple, unskilled work. Claimant's work history in the 15 years prior to the application consists of work as a furniture delivery person and security guard. In light of the entire record, Claimant's RFC with respect to his mental ability to perform basic work activities, and the fact that Claimant has no physical limitations due to his mental impairments, it is found that Claimant is able to perform past relevant work as a delivery person. Accordingly, Claimant is **not** disabled at Step 4.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/22/2015**

Date Mailed: **6/22/2015**

ACE / tlf

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

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

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

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

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

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

Attention: MAHS Rehearing/Reconsideration Request

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

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

CC:

[Redacted]