

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

**IN THE MATTER OF:**



Reg. No.: 15-007085  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: June 4, 2015  
County: Wayne (76)

**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 4, 2015, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (DHHS) included [REDACTED], medical contact worker.

**ISSUE**

The issue is whether DHHS properly denied Claimant's Medical Assistance (MA) 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 MA benefits, including retroactive MA benefits from January 2014 (see Exhibits 68-69).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 20-21).
4. On [REDACTED], DHHS denied Claimant's application for MA benefits and mailed a Medicaid Program Eligibility Notice (Exhibits 17-18) informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. As of the date of the administrative hearing, Claimant was a 26-year-old male.
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 12<sup>th</sup> grade, via general equivalency degree.
9. Claimant has a history of semi-skilled employment, with no known transferrable job skills.
10. Claimant alleged disability based on restrictions related to mental health and a gunshot wound.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, a 3-way telephone hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);

- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).  
BEM 260 (7/2012) pp. 1-2

Claimant credibly testified that he applied for SSI benefits September 17, 2014. Claimant's testimony also indicated that he was approved for SSI benefits. The first month of Claimant's SSI eligibility was not established; however, the Social Security Administration rules are known to generally not approve SSI for months before and including the month of SSI application. Thus, the issue of Claimant's disability must be established for the period at least from January 2014 through September 2014. No other of the above circumstances is applicable to Claimant for the time period of January 2014 through September 2014. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual (see *Id.*, p. 2).

Generally, state agencies such as DHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHHS regulations. BEM 260 (7/2012), p. 8.

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 MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 evidence.

Claimant testified that he was shot in the lung in January 2015. Client testified that the accompanying surgery was done on his front and back sides. Claimant testified that surgery successfully removed the lodged bullet but that a portion of his left lung was removed. Claimant testified that he underwent physical therapy for a few days while hospitalized. Client testified that it took about 2 months before he felt better. Claimant testified that he is not as physically strong as he was before he was hospitalized.

Hospital documents (Exhibits 34-59; A78-A202) from an admission dated [REDACTED] were presented, though it was noted that Claimant transferred from another hospital. Mental health records noted that Claimant was shot because he refused to give up his cellular telephone (see Exhibit A2). It was noted that Claimant originally presented with a gunshot wound to the chest. It was noted that Claimant underwent a median sternotomy. It was noted that Claimant had respiratory failure and was intubated. A left broken rib was noted. It was noted that Claimant underwent a left lung wedge resection. Discharge diagnoses included hypovolemic shock, acute respiratory failure, and renal insufficiency. A discharge date of [REDACTED] was noted.

Following hospital discharge, Claimant testified that he was jailed for violating his parole; Claimant testified this occurred in March 2014. Medical records noted that while incarcerated, Claimant began acting out by banging his head against the wall and threatening suicide. Claimant testified that he had a mental breakdown while in prison. Claimant testified that he stopped taking his medications with the intent to save them up for a suicide attempt. Claimant testified that he subsequently overdosed and had his stomach pumped. On [REDACTED], Claimant was court-ordered to 90 days of hospital treatment (see Exhibit A2).

Psychiatric hospital documents (Exhibits A1-A45) from an admission dated [REDACTED] were presented. Claimant's behavior was described as deceptive. Upon admission, Claimant's cognitive function, orientation and concentration seemed to be very good. Claimant's physical appearance was noted to be good though several healed body scars were noted. Claimant's hospitalization was noted to be "difficult due to many behavioral problems." Claimant was found to be smoking cigarettes and marijuana despite the prohibition. Claimant was thought to have audio and visual hallucinations. Claimant's mood ranged from anger (such as when he was punching walls) to sadness (when he attempted suicide). Claimant was described as intolerant to frustrations. It was noted that Claimant manipulated less functional patients and attacked one, a psychotic patient who was mumbling. Claimant was thought to be paranoid, a symptom that has likely occurred for several years. It was noted that Claimant was uncooperative in taking medications and describing his reaction to them.

In the final three weeks of Claimant's mental hospitalization, Claimant was prescribed Proloxin, Benadryl, and Seroquel. During this period, Claimant was described as pleasant and cooperative. During this period, Claimant was able to travel to unsupervised areas without any incident. It was noted that Claimant expressed insight and cooperative behaviors during group therapy. Discharge diagnoses included the following, major depressive disorder (recurrent with psychotic symptoms in remission), PTSD, alcohol and marijuana abuse, and a long history of ADHD and impulsivity. Claimant's GAF was 45-50. A discharge date of [REDACTED] was noted. Claimant's lengthy psychiatric hospitalization included numerous emergency room visits.

Hospital documents (Exhibits A46-A52) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain and vomiting. An impression of a left upper lobe pulmonary nodule was noted following abdominal x-rays.

Hospital documents (Exhibits A53-A58) from an encounter dated [REDACTED] were presented. It was noted that Claimant underwent a cystoscopy in response to complaints of a urinary tract infection.

Hospital documents (Exhibits A59-A64) from an encounter dated [REDACTED] were presented. It was noted that Claimant complained of a swollen forehead, ongoing for several months. A diagnosis of a sebaceous cyst was noted. It was noted that the cyst was excised.

Hospital documents (Exhibits A65-A78) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with altered mental status and extreme lethargy after taking extra Seroquel. It was noted that Claimant's condition improved and he was discharged.

A detailed history of Claimant's mental health was provided in hospital records (see Exhibits A1-A3). It was noted that Claimant had a "long history" of psychiatric hospitalizations since the age of 13. Problems of severe attention deficit and impulse control were noted. A long history of suicide attempts, alcohol abuse, and marijuana use was noted.

Claimant testified that he feels angry, depressed, and suicidal without medications. Claimant says he is "pretty much cool" if he takes his medication. Claimant testified that he used to have hallucinations, but they stopped about six months ago, presumably because Claimant's medications were properly adjusted.

Claimant testified that he has ongoing difficulties with social interactions and maintaining attention. Claimant testified that he does not really like people and that the feeling is mutual. Claimant testified that he see a psychiatrist on a monthly basis and a therapist twice per month.

Presented medical documents demonstrated that Claimant has a lengthy history of psychiatric problems. Multiple incidents of suicide attempts (Claimant testified he's had approximately 10 prior attempts), criminal behavior, psychotic behavior, and psychiatric hospitalizations were verified.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. 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's most prominent impairment appears to be depressive disorder. Depressive 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.

The most compelling evidence against finding that Claimant is disabled was Claimant's change in behavior during his 2014 psychiatric hospitalization. Claimant transformed from violent and suicidal into a cooperative and trustworthy patient. Despite Claimant's remarkable improvement, evidence was highly supportive of disability.

At discharge of his lengthy psychiatric hospitalization, Claimant's GAF was 45-50. The Diagnostic and Statistical Manual of Mental Disorders (4<sup>th</sup> 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)." Thus, even at Claimant's apparent mental health peak, he still had marked restrictions.

It is difficult to expect Claimant to have magically healed after his long history of antisocial and disruptive behavior. This speculation is supported by a psychiatric

hospital physician's statement at discharge that Claimant had poor potential for rehabilitation due to his lack of life structure (see Exhibit A5).

Based on Claimant's history of suicidal behavior, hallucinations, difficulty with concentration and feelings of worthlessness, Claimant sufficiently meets Part A of the above listing. Based on Claimant's troubled past and low GAF, it is found that additional stress would cause Claimant to decompensate. It is found that Claimant meets Listing 12.04 and is a disabled individual. Accordingly, it is found that MDHHS improperly denied Claimant's MA application.

A finding of disability since January 2014 is further supported by the SSA finding that Claimant is disabled as of September 2014 (the month of his SSI application date) and the presented medical history. If Claimant is disabled as of September 2014, it is reasonable to extend the finding to the 8 earlier months where Claimant was hospitalized for the majority of that time.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHHS improperly denied Claimant's application for MA benefits. It is ordered that DHHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from January 2014;
- (2) evaluate Claimant's eligibility for benefits subject to the finding that Claimant is a disabled individual; and
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial.

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



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

Date Signed: **6/19/2015**  
Date Mailed: **6/19/2015**  
CG / cl

**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:

