

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007872
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: July 01, 2015
County: WAYNE-DISTRICT 57

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in person hearing was held on July 1, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant [REDACTED], the Claimant's Authorized Hearing Representative the Claimant's Case Manager from the [REDACTED] also appeared. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant applied for State Disability Assistance (SDA) on January 23, 2015.
2. The Medical Review Team denied the application on [REDACTED]. The Department notified the Claimant of the denial on [REDACTED].
3. The Claimant requested a timely hearing on [REDACTED].
4. The Claimant has alleged mental disabling impairments which include anxiety and depression with auditory voices, as well as alcohol dependence in remission since December 2014.
5. The Claimant has alleged physical disabling impairments including problems gripping, hepatitis C and arthritis in his legs.

6. At the time of the hearing the Claimant was 56 years of age, and will be 57 on [REDACTED]. The Claimant is 6'1" in height and weighs 145 pounds. The Claimant completed high school and has difficulty writing but can read.
7. The Claimant's has no relevant past work history and was currently not working at the time of the hearing.
8. The Claimant's impairments have lasted for 90 days and are expected to last for 12 months or more.

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 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. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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

blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need 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). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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

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

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

Id.

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

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized below, the Claimant has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

A summary of the Claimant's medical evidence follows:

The Claimant has alleged mental disabling impairments which include anxiety and depression with auditory voices, as well as alcohol dependence in remission since December 2014.

The Claimant has alleged physical disabling impairments including problems gripping, hepatitis C and arthritis in his legs. No medical evidence was presented regarding the physical impairments alleged.

The Claimant has been in psychiatric treatment since March 2014. The Claimant's treating psychiatrist reviewed the Claimant's status on [REDACTED]. The Diagnosis was major depression with psychotic features, alcohol use disorder and tobacco use disorder. The Claimant has not used alcohol since December 2014. The report indicates that the Claimant reported no auditory voices heard lately, no suicidal thoughts, expressed desire to get back into the work force. The exam noted that psychomotor retardation was present, affect was bland, with limited range, speech low toned, answers were brief, insight was fairly limited, judgment was fair, and perception was noted that Claimant was not responding to internal stimuli. The GAF score was 48. The Claimant was prescribed trazodone for mood and sleep, buspirone for anxiety and risperdone for voices and anxiety.

The Claimant's case manager, who has worked with the Claimant since the beginning of treatment, noted that Claimant's motivation is low, with no interest outside of his home and gets anxiety around people with nausea symptoms. Claimant's ability to perform simple tasks is slow due to depression. The Claimant forgets to shower and has poor concentration.

The Claimant was given a consultative psychiatric evaluation on [REDACTED]. The exam notes a suicide attempt by jumping out a window about 10 years ago resulting in broken arm and ankle fractures. At the time of the exam the Claimant reported that he was abstinent from all substances. The examiner noted the Claimant presented as withdrawn and preoccupied.

During the examination in evaluating description of attitude and behavior, examiner noted patient maintained marginal contact with reality. Claimant presented with low self-esteem and moderate psychomotor retardation. He appeared calm, withdrawn and introverted. He was cooperative. He was dysphoric in mood and appeared autonomous and motivated to seek employment. His insight appeared to be impaired.

The evaluation of stream of mental activity noted, patient lacked spontaneity. Speech was monotonous, softly spoken, slow and reaction time was somewhat delayed.

The evaluation of mental thought content noted that patient reports of subjective experiences of auditory hallucination time to time, running commentary on his behavior. Thought content devoid of delusion themes. No suicidal plans. Patient reports broken sleep.

Emotion reaction was evaluated as patient appeared visibly dysphoric in mood, withdrawn, anhedonic and presented self-deprecating despair. Patient presented with lack of motivation and ambition. There was no sign of liability of mood. He did not appear to be anxious, nor angry.

The diagnosis was major depressive disorder, single episode, chronic with psychotic feature. Alcohol use disorder in early remission. Stomach ache per patient. Prognosis was fair to guarded. Fair evaluation was due to responsiveness to treatment and partial remission of psychotic experience.

The medical source statement noted that based upon history and clinical findings, the patient is experiencing depressive spectrum manifested by lack of ambition, motivation, insomnia, broken sleep and fluctuating weight. He is also hearing voices, running commentary of his behavior. He also presents chronic use of alcohol since his late teens. He has been running courses of remission. The Patient is seeking psychiatric treatment on an outpatient basis at the VA and has shown some improvement in regard to hallucinations and mood disorder. However the patient appeared generally unmotivated with lack of incentive. He also has no history of vocational productivity. He did not seem to be able to adapt to assignments as work as well as changes of assignments due to cognitive impairment and first rank negative symptoms.

The Claimant was also seen for treatment at Team Mental Health where his diagnosis was bipolar disorder. No records from Team Mental Health were provided.

During the hearing the undersigned observed the Claimant to be withdrawn and speaking in soft tones in a monotone voice, had little eye contact and sounded and appeared depressed. The Claimant credibly testified that he is anxious around people he does not know and experiences nausea. The Claimant cries twice weekly and his voices have lessened with medications. He described being overwhelmed and confused when having to concentrate and requires assistance with tasks and has memory problems such that he cannot recall events from a month ago. He has little, if any, contact other than his sister. His sister had to set up his TV as he was unable to.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

In light of the medical evidence presented Listing 12.04 Affective Disorders was examined. This Listing requires that the following criteria be demonstrated:

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: 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 ... and

12.04 B requires that two of the following are met:

- 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;

Based upon the above criteria it is determined that the medical evidence demonstrates that 12.04B 2 and 3 are demonstrated. Based upon the symptoms observed and clinical findings the Claimant's has demonstrated the he has persistence, either continuous or intermittent of several of the requirements set forth in paragraph A which include, A1, a., b., c., d., e., f., ,g., and i.

In addition the medical evidence has demonstrated that the Claimant has met the requirements of 12.04B, 2 and 3. Due to the Claimant's past alcohol dependence the question was examined as to whether alcohol dependence was material to the Claimant's disabling impairments. In light of the Claimant sobriety and current remission it is determined alcohol dependence is not material.

Based upon a review of the treating psychiatrist's evaluation and the consultative examination, which also include confirmation of the Claimant's major depression characterized by sleep disturbance, difficulty concentrating or thinking, easy distractibility, as well as satisfying the requirements of the listing for Depressive syndrome which results in marked restrictions of activities of daily living, difficulties in maintaining social functioning and difficulties in maintaining concentration, persistence or pace it is determined that the claimant has satisfied the requirements or its medical

equivalent of listing 12.0 4B for depressive syndrome and therefore is found disabled at Step Three of the analysis with no further analysis required.

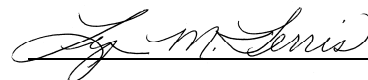
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall reregister and reprocess the Claimant SDA application dated [REDACTED], and determine whether the non medical requirements are met.
2. The Department shall issue an SDA supplement which the Claimant is otherwise entitled to receive in accordance with Department policy.
3. A review of this matter shall be conducted in July 2016.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/30/2015**

Date Mailed: **7/30/2015**

LMF / 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:

