

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-019428
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: January 28, 2016
County: Kent

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 28, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager, and [REDACTED]cker, specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner 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], Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp 7A1-7A3).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 1, pp. 4-7) informing Petitioner of the denial.
5. On [REDACTED], Petitioner requested a hearing disputing the denial of cash benefits (see Exhibit 1, pp. 2-3).

6. As of the date of the administrative hearing, Petitioner was a 40-year-old male.
7. Petitioner has not earned substantial gainful activity since before the first month of benefits sought.
8. Petitioner's highest education year completed was the 8th grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on various mental health restrictions.

CONCLUSIONS OF LAW

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).

Petitioner's hearing request noted a dispute of Family independence Program (FIP) (cash) benefits (see Exhibit 1, p. 3). FIP is a MDHHS program available to caretakers of minor children and pregnant women. Petitioner testified that he only intended to dispute a denial of SDA benefits. MDHHS was not confused by Petitioner's request to dispute FIP eligibility and was prepared to defend a denial of Petitioner's SDA application denial. It is found Petitioner intended to dispute SDA eligibility and the hearing was conducted accordingly. It should also be noted that other procedural obstacles to a decision on the merits were not raised during the hearing.

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 Petitioner. Accordingly, Petitioner may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Petitioner 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. SDA differs in that a 90 day period is required to establish 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. The 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA and has not performed SGA since the date of application. Accordingly, the disability analysis may proceed to Step 2.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational 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 petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are 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 Petitioner'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 radiology report (Exhibit 1, p. 341-342) dated [REDACTED], was presented. Following views of Petitioner's hips, an impression of relatively symmetric hips with suggestions of very early spur formation on the right femoral head was noted.

A radiology report (Exhibit 1, p. 340) dated [REDACTED], was presented. Following views of Petitioner's lumbar, an impression of a normal radiographic appearance with "very minimal" spurring at L4-L5 was noted.

Various medical center encounter notes (Exhibit 1, pp. 158-260, 308-328) ranging from June 2014 through February 2015 were presented. Various complaints including the following were noted: blurry vision, eye irritation, hypertension, mild ear ringing, lower back pain, and dental needs. Various physical therapy notes (Exhibit 1, pp. 329-339) dated [REDACTED] and [REDACTED] were also presented.

Certified physician assistant encounter notes (Exhibit 1, pp. 148-154, 303-307) dated [REDACTED], were presented. Treatment for erectile dysfunction was noted.

Mental health case management notes (Exhibit 1, pp. 139-144, 301) dated [REDACTED] were presented. Petitioner's GAF was noted to be 45. An assessment of bipolar disorder was noted. It was noted Petitioner was referred for case management services due to an increase in psychiatric symptoms.

Mental health case management notes (Exhibit 1, pp. 130-137) dated [REDACTED], were presented. MDHHS paperwork was noted as discussed. A crisis intervention plan was completed.

Mental health case management notes (Exhibit 1, pp. 125-129) dated [REDACTED], were presented. It was noted Petitioner presented and the following observations were noted: depressed mood, flat affect, and good eye contact. Housing and paperwork for MDHHS were noted as discussed.

Medical center treatment notes (Exhibit 1, pp. 113-124) dated [REDACTED], were presented. Assessments of overweight, radiating back pain, "severe" erectile dysfunction, HTN, ringing in ears, and left-sided muscle cramp were noted. A reported pain of 8/10 was noted. Various medications were continued.

Mental health case management notes (Exhibit 1, pp. 59-109) dated [REDACTED], were presented. A biopsychosocial assessment and individualized action plan were performed. It was noted Petitioner reported ongoing complaints of helplessness, hopelessness, decreased appetite, decreased sleep, nervousness, audio hallucinations, visual hallucinations, non-attendance to ADLs, low motivation, racing thoughts, lack of anger control, and impulsivity. Petitioner's symptoms were reported to be frequent and intense. Assessments of bipolar disorder and ADHD were noted.

A letter from Petitioner's temporary limited licensed psychologist (Exhibit 1, p. 58) dated [REDACTED], was presented. It was noted Petitioner participated in weekly case management services and quarterly psychiatric appointments.

Mental health case management notes (Exhibit 1, pp. 52-56) dated [REDACTED], were presented. Various MDHHS appointments were noted as discussed.

Mental health case management notes (Exhibit 1, pp. 38-42) dated [REDACTED], were presented. Petitioner's progress in finding independent housing was discussed. An assessment of moderate schizoaffective disorder was noted.

Medical center treatment notes (Exhibit 1, pp. 43-51) dated [REDACTED], were presented. An assessment of radiating back pain and schizoaffective disorder were noted by a certified physician assistant.

A consultative medical evaluation (Exhibit 1, pp. 269-273) dated [REDACTED], was presented. Petitioner complaints included chronic neck and lumbar pain. Petitioner reported he injured his back when hit by a ball crane while working construction. Petitioner reported a walking restriction of 1-2 blocks, 10 pounds of lifting, and 90 minutes for sitting. Reduced ranges of motion were noted throughout Petitioner's cervical and lumbar spine. Mild difficulty with heel and toe walking, squatting, and standing 3 seconds on either foot were noted. The examiner noted Petitioner's symptoms appeared due to deconditioning, ligamentous pain, and myofascial pain. Petitioner's gait was noted as well preserved.

Mental health case management notes (Exhibit 1, pp. 33-37) dated [REDACTED], were presented. A continuing GAF of 45 was noted. Various treatment goals (e.g. managing symptoms, find independent housing...) were noted as discussed. It was noted Petitioner reported recent homicidal ideation. An ongoing diagnosis of severe schizoaffective disorder was noted.

Initial psychiatric evaluation documents (Exhibit 1, pp. 12-32) dated [REDACTED] were presented. Complaints of stress, suicidal ideation, paranoia, and anhedonia were noted. A history of being "in and out of jails/prison" since late adolescence was noted. It was noted Petitioner tended to eat a lot at night but also often go several days without eating. Petitioner reported that he hated waking up. A history of audio and visual hallucinations was referenced from a previous treater's records. It was noted Petitioner felt hurt by many different persons. Petitioner reported feeling insecure and full of rage. It was noted Petitioner had difficulty answering some question due to disorganized thoughts. Mental status examination findings included depressed and anxious mood, flat affect, clear speech, paranoid thought content, persecutory delusions, average intelligence, and mildly impaired judgment. A diagnosis of severe-to-moderate schizoaffective disorder was noted. Various medications were noted to be prescribed.

A summary of treatment documents (Exhibit 1, pp. 9-11) dated [REDACTED], were presented. Active problems included bipolar disorder, ADHD, insomnia, nerve damage, back pain, HTN, and neck stiffness (all ongoing since June 2014). Active medications included perphenazine, benztropine mesylate, oxcarbazepine, hydromorphone HCL, amlodipine besylate, Lisinopril, and Levitra.

Petitioner testified he cracked his pelvis in 1994 and that the fracture has not fully healed; Petitioner could not state why. Petitioner also testified he has chronic back pain due to multiple ruptured discs in his lumbar spine. Petitioner also testified that damaged spinal nerves causes him leg pain.

Petitioner testified his ambulation is limited to 1-2 blocks before he loses his breath. Petitioner testified he is capable of performing 30-60 minutes of sitting. Petitioner testified he could sit for 30 minute periods, though he doubted if he was educated enough to work in an office. Petitioner testified he could lift/carry 15-20 pounds. Petitioner testified he uses crutches when his leg pain is unbearable.

Petitioner testified he showers independently, but he takes his time. Petitioner testified he has difficulty dressing himself on "bad" days. Petitioner testified he has unspecific limitations in performing housework. Petitioner testified he can drive. Petitioner testified he is financially dependent on his former mother-in-law, and tries to help her around the home by performing small tasks (e.g. fixing her a sandwich).

Petitioner testified that he has bad nerves. Petitioner testified he attended weekly counseling sessions for the last year. Petitioner testified he has seen a psychiatrist for the past 1-2 years. Petitioner testified he experiences regular audio hallucinations (about every other day). Petitioner testified he has never been psychiatrically hospitalized, though he has attempted suicide three times in the past. Petitioner testified he primarily spends his time at home.

Presented records established Petitioner experiences multiple psychological symptoms which would restrict his abilities to concentrate, persist, and/or socially function. Presented records also sufficiently verified Petitioner's symptoms have persisted since the month of SDA application.

It is found that Petitioner established significant impairment to basic work activities for a period longer than 90 days. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Petitioner alleged disability, in part, based on schizoaffective disorder and related symptoms. The applicable disorder 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.

Petitioner's treatment records verified a history of audio hallucinations, flat affect, and social withdrawal. Petitioner meets Part A of the above listing. The analysis will proceed to determine if marked restrictions were established.

Petitioner's GAF was regularly noted to be 45. 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)." This consideration is indicative of marked restrictions.

Petitioner's schizoaffective disorder diagnosis was characterized by his psychiatrist as "severe-to-moderate." Generally, such a diagnosis equates to marked or borderline-marked impairments.

Petitioner presented a compliant psychiatric treatment history rife with symptoms consistent with marked restrictions (e.g. audio hallucinations, homicidal ideation, anger control difficulty, disorganized thoughts, impaired judgment, non-attendance to ADLs...). Petitioner's documentation also indicated little improvement in Petitioner's symptoms during the period of treatment. Presented evidence was sufficient to demonstrate marked restrictions in social interaction and concentration. It is found Petitioner meets Part B of the psychotic disorder listing.

It is found Petitioner meets Listing 12.03. Accordingly, Petitioner is found to be disabled and that MDHHS improperly denied Petitioner'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 Petitioner's application for SDA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit application dated [REDACTED];
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner 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: **FEBRUARY 19, 2016**
Date Mailed: **FEBRUARY 19, 2016**

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

