

**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.: 15-021495
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: February 3, 2016
County: Wayne (19)

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 February 3, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] Petitioner's mother, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], medical contact worker.

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 (see Exhibit 1, pp. 5-24).
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 Exhibits 93-98).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, pp. 2-3).
6. As of the date of the administrative hearing, Petitioner was a 23-year-old male.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner's highest education year completed was the 8th grade.
9. Petitioner has no history of employment.
10. Petitioner alleged disability based on restrictions related to schizoaffective disorder.

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 requested a hearing to dispute a denial of SDA benefits. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 99-102) stating the basis for denial was that Petitioner was not disabled.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), 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 (1/2012), 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. Accordingly, the disability analysis may proceed to the second step.

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.

Mental health treatment records dated [REDACTED] (Exhibit 1, pp. 56-72) were presented. The documents were signed by a licensed counselor from Petitioner's treating mental health agency. Petitioner reported ongoing complaints of insomnia, lack of daily activity, sadness, anxiety, paranoia, mood swings, depression, anhedonia, and fleeting suicidal ideation (as recently as the day before). Observations of Petitioner included poor eye contact, depressed mood, and flat affect. It was noted Petitioner appeared to be hopeless and unsure of himself. Assessments of Petitioner included poor judgment, poor insight, fair impulse control, and normal memory.

Physician office visit notes (Exhibit 1, pp. 48-49) dated [REDACTED] were presented. It was noted that Petitioner presented for a wellness exam. No abnormalities were noted.

Mental health treatment records dated [REDACTED] (Exhibit 1, pp. 52-55) were presented. The documents were signed by an unknown staff member from Petitioner's treating mental health agency. Complaints of hearing voices, anxiety, irritability, and paranoia were noted. Observations of Petitioner included lack of eye contact, constricted mood, and anxious. Various medications were prescribed.

Hospital emergency room documents (Exhibit 1, pp. 75-85) dated [REDACTED], were presented. It was noted Petitioner presented for a psychiatric evaluation following suicidal ideation and hallucinations (ongoing for 1 week). It was noted that Petitioner received various medications. Noted discharge diagnoses included schizoaffective disorder. A discharge date of [REDACTED], was noted.

A letter from Petitioner's treating temporary limited licensed psychologist (TLLP) dated [REDACTED] (Exhibit 1, p. 50) was presented. It was noted Petitioner was diagnosed with major depression (recurrent, severe, and with psychotic features).

A Psychiatric/Psychological Examination Report (Exhibit 1, 29-31) dated [REDACTED], was presented. The form was completed by Petitioner's TLLP who noted a 4 month history with Petitioner. Reported symptoms included audio and visual hallucinations, difficulty sleeping, low motivation, and mood swings. A psychiatric hospitalization from April 2015 was noted. It was noted Petitioner reported learning and life navigation difficulties. Noted observations included depressed mood, impulsive behavior, mood swings, and poor judgment.

Physician office visit notes (Exhibit 1, pp. 45-47) dated [REDACTED], were presented. It was noted Petitioner was a heavy caffeine drinker and pack per day tobacco smoker. Treatment for lumbar pain and insomnia was noted. It was noted Petitioner's active medications included Mobic, Zanaflex, Zyprexa, Gabapentin, Neurontin, Olanzapine, and Trazodone.

A hospital physician letter dated [REDACTED] (Exhibit 1, p. 86) was presented. It was noted Petitioner was recently admitted through petition for psychiatric-related reasons. Petitioner testimony indicated his mother admitted him after he talked about committing suicide.

Petitioner testified he has seen a psychiatrist since he was 18 years old. Petitioner testified he has ongoing struggles with paranoia, audio hallucinations, and insomnia. Petitioner also testified he hears audio hallucinations twice per day. Petitioner testified the voices are memories of family and friends putting him down. Petitioner testified he has to take medications so he sleeps at night and not all day. Petitioner testified he always feels like someone is behind him. Petitioner testified he feels worthless for his lack of education. Petitioner testified he would not bother trying to finish school because he cannot do it. Petitioner and his mother testified Petitioner does not shower often;

both persons testified Petitioner did not shower for a two week period before the hearing.

Presented evidence sufficiently established various mental health problems that restrict Petitioner's ability to concentrate, persist, and appropriately socially interact. The restrictions were also established to have been ongoing since at least Petitioner's SDA application date.

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. 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. Petitioner meets Part A of the above listing. The analysis will proceed to determine if marked restrictions were established.

Petitioner's TLLP completed a Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 32-33) on [REDACTED]. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". It was noted that Petitioner was markedly restricted in the following abilities:

- Remembering locations and other work-like procedures
- Understanding and remembering detailed instructions
- Carrying out simple 1-2 step directions.
- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Working in coordination or proximity to other without being distracting
- Making simple work-related decisions
- Completing a normal workday without psychological symptom interruption
- Interacting appropriately with the general public
- Accepting instructions and responding appropriately to criticism
- Getting along with others without exhibiting behavioral extremes
- Responding appropriately to changes in the work setting
- Being aware of normal hazards and taking appropriate precautions
- Traveling to unfamiliar places including use of public transportation
- Setting realistic goals or making plans independently of others.

The abilities listed on the MRFCA are broken into 4 types: understanding and memory, sustained concentration and persistence, social interaction, and adaptation. Petitioner was markedly restricted in the majority of abilities for each section. Of most concern was Petitioner's marked difficulty in completing a workday without psychological interruption, maintaining a schedule, making simple work decisions, interacting with the public, and getting along with peers. These inabilities would likely disqualify Petitioner from performing any type of employment.

Treatment records were highly indicative that Petitioner meets schizoaffective disorder listing requirements. A consultative psychologist indicated Petitioner's restrictions were much less severe.

A mental status examination report (Exhibit 1, pp. 89-92) dated [REDACTED], was presented. The report was noted as completed by a consultative licensed psychologist. A history of audio hallucinations was noted. Noted observations of Petitioner made by the consultative examiner include the following: spontaneous speech, superficially cooperative, blunted expression, and eurythmic mood. It was noted Petitioner was unable to recall three items across three minutes. It was noted Petitioner was unable to name three presidents or famous people. Petitioner was unable to spell "world" in backwards fashion. Petitioner was unable to correctly answer the math problems of 100-7 or 5x5. The examiner assessed Petitioner's social skills, ADLs, communication, coping skills, frustration level, behavior, and relationships as good. A diagnosis of adjustment disorder was noted. The diagnosis was noted as mild.

The consultative report was unpersuasive for numerous reasons. Adjustment disorder is indicative of a temporary period of depression caused by a stressful life event. The consultative psychologist did not even reference a Petitioner life event justifying the diagnosis.

The classification of a "mild" diagnosis was also inexplicable. Petitioner's treatment history includes paranoia, audio hallucinations, and suicidal ideation leading to hospitalization; these symptoms are indicative of a more than "mild" disease. It cannot be argued that the examiner was unaware of the symptoms as they were noted in the report. It is also not known how Petitioner's coping skills, ADLs, and relationships qualified as "good."

The opinions of the consultative examiner were found to be extraordinarily unpersuasive. Accordingly, the report and its opinions are rejected.

Based on presented evidence, it is found Petitioner meets the listing for schizoaffective disorders. Accordingly, Petitioner is disabled and it is found 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 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: **2/9/2016**

Date Mailed: **2/9/2016**

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:

