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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

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Date Mailed: March 15, 2018
MAHS Docket No.: 17-010490-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION ON RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the request for rehearing and/or reconsideration by attorney for Petitioner, Benjamin Brown, of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ), Christian Gardocki, at the conclusion of the hearing conducted on October 26, 2017, and mailed on December 20, 2017, in the above-captioned matter.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on March 15, 2018.

ISSUE

Did the ALJ properly conclude that Petitioner was not disabled and, accordingly, that his application of State Disability Assistance (SDA) was properly denied by the Department of Health and Human Services (Department)?

FINDINGS OF FACT

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

1. On October 26, 2017, a hearing was held in the above captioned matter before ALJ Gardocki resulting in a Hearing Decision mailed on December 20, 2017.

2. The Findings of Fact numbers 1 through 12 in the Hearing Decision under Docket Number 17-010490 are incorporated by reference; Findings of Fact numbers 13 and 14 are not.
3. On January 19, 2018, the Michigan Administrative Hearing System (MAHS) received Petitioner's request for reconsideration filed by Petitioner's counsel.
4. On March 15, 2018, MAHS granted the request for reconsideration.

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April m2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In the Hearing Decision in the above-captioned matter, ALJ Gardocki summarized the medical evidence as follows and Petitioner did not dispute this summary:

Hospital documents (Exhibit 1, pp. 75-140) from an admission dated [REDACTED] 2017, were presented. It was noted that Petitioner was brought to the hospital after ingesting Seroquel, Zoloft, Valium, and alcohol. It was noted that while in the waiting room, Petitioner ingested additional medications. Petitioner reported homicidal and suicidal ideation related to financial and relationship stressors. Petitioner reported increased alcohol intake over the last 3-4 weeks (see Exhibit 1, p. 85). Mental status exam assessments at admission included a flat and depressed affect.

Petitioner's hospital admission included a psychiatric consultation on [REDACTED] 2017. Petitioner reported a history of multiple past suicide attempts. Petitioner reported mood regulation difficulties and hallucinations since the age of 4 years. Petitioner reported his mood fluctuates between depression with poor concentration and elevated mood with increased talking and pacing. Petitioner reported "non-stop" racing thoughts. A history of alcohol and cocaine abuse was noted. Mental status exam assessments included jittery motor activity, irritable and depressed mood, fair judgment, and fair insight. Petitioner reported post-traumatic stress related to a distant incident involving getting stabbed. Petitioner was deemed to be a high suicide risk. Diagnoses included schizoaffective disorder (in partial remission) and severe alcohol use disorder. Petitioner's psychiatric illness was deemed to be "fairly controlled" by medications. Admission to the mental health unit was recommended. Petitioner was deemed to be a risk of violence during alcoholic withdrawal. Various medications were prescribed.

Hospital documents (Exhibit 1, pp. 33-74) dated [REDACTED] 2017, were presented. It was noted Petitioner transferred to a new hospital for the purpose of alcohol detoxification. Petitioner reported his longest period of alcohol abstinence was 3 years when he was recently imprisoned; Petitioner reported he was released from prison in August 2016. Petitioner was noted to be mostly isolative during admission. Improved mood was noted. A discharge date of [REDACTED] 2017, was noted. Mental exam assessments at discharge included fair insight and a "good" mood. Discharge diagnoses included unspecified psychotic disorder, unspecified bipolar disorder, and severe alcohol use disorder. Discharge medications included Hydroxyzine, phenobarbital, gabapentin, and quetiapine.

Hospital emergency room documents (Exhibit 1, pp. 1-33) dated [REDACTED] 2017, were presented. It was noted that Petitioner presented with complaints of worsening abdominal pain, ongoing for 3 days; reported pain level was 7/10. Various medications were provided and various radiology testing was performed. A discharge diagnosis of epiploic [appendicitis] was noted.

Hospital emergency room documents (Exhibit 2, pp. 1-16) dated [REDACTED], 2017, were presented. It was noted that Petitioner presented with complaints of abdominal pain, ongoing for 7 days. It was noted that Petitioner last drank alcohol 30 minutes earlier. It was noted Petitioner drank "daily" amounts of "seven to eight" alcoholic drinks. Mild gastrointestinal tenderness was noted. Petitioner reported that he wanted to commit suicide due to pain but instead left a note that he was going to the hospital. Petitioner was treated with anti-nausea medication. Chest and abdominal radiology was negative. Petitioner's condition was noted to be improving. At discharge, Petitioner denied suicidal ideation. A partial hospitalization program (PHP) was planned following discharge.

A PHP initial assessment (Exhibit 3, pp. 109-119) dated [REDACTED] 2017, was presented. Petitioner reported feeling agitated, restless, hopeless, and overwhelmed. Two previous suicide attempts were noted. It was noted Petitioner was currently enrolled at a community college. A relapse of alcohol abuse was noted from the prior year. Mental health assessments included depressed mood, labile affect, suicidal ideation, impaired impulse control, and impaired judgment. It was noted Petitioner was in the preparation stage of alcohol recovery.

Various PHP group therapy and medication notes (Exhibit 3, pp. 17-18) from [REDACTED], 2017, through [REDACTED] 2017, were presented. Petitioner's cooperation with therapy and medications was noted.

PHP Group Progress Notes (Exhibit 3, pp. 2-3, 9-11) dated [REDACTED], 2017, were presented. Mental health examination assessments were all normal for morning and afternoon sessions.

A PHP Medication Review Note (Exhibit 3, pp. 4-8) dated [REDACTED] 2017, were presented. It was noted Petitioner would be discharged that day. Valium, Zoloft, and quetapine were continued. Adequate concentration and eurythmic mood were noted. Follow-up with a behavioral health center was planned. Petitioner's GAF was 45.

A PHP Discharge Summary (Exhibit 3, pp. 12-15) dated [REDACTED] 2017, was presented. Fair progress during PHP was noted. A need for outpatient services was noted. Activities of daily living were reported to be good. A decrease in symptoms was reported by Petitioner. An Axis I diagnosis of major depression (recurrent and moderate) was noted. A secondary diagnosis of alcohol abuse was noted. Petitioner's GAF was 50.

Based on the evidence presented, ALJ Gardocki found Petitioner disabled at step 3 of the sequential process, finding that his condition met Listing 12.04 under Appendix 1 of

Subpart P of 20 CFR, Part 404, 20 CFR 416.920(a)(4)(iii), for depressive, bipolar and related disorders. In arriving at this conclusion, ALJ Gardocki found that Petitioner had marked restrictions to concentration and social interaction. Although Petitioner's condition met a listing, ALJ Gardocki concluded that his drug and alcohol abuse (DAA) was a contributing factor material to his condition that precluded the finding that he was disabled under the listing. He then found that Petitioner was capable of his prior employment if he maintained alcohol sobriety.

Petitioner does not dispute the conclusion that his condition met a listing under 12.04 but does dispute ALJ Gardocki's finding that his DAA was a contributing factor material to the conclusion that he was disabled. In the request for reconsideration, Petitioner's counsel alleges that the ALJ misapplied policy by failing to apply Social Security Ruling (SSR) 13-2p in assessing whether Petitioner's alcohol use was a contributing factor material to Petitioner's disability. Additionally, counsel pointed out inconsistencies within the Hearing Decision in the ALJ's assessment of the limitations resulting from Petitioner's mental impairment.

Once application of the five-step sequential evaluation results in a finding that an individual is disabled and there is evidence of DAA, the ALJ must determine whether DAA is a contributing factor material to the determination that the individual is disabled. 20 CFR 416.935(a). Because there was evidence of Petitioner's alcohol abuse, ALJ Gardocki proceeded to address whether Petitioner's alcohol use was a contributing factor material to the determination that Petitioner was disabled. Petitioner's counsel argues that ALJ Gardocki misapplied SSR 13-2p in making this assessment.

Under SSR 13-2p, a petitioner is not considered disabled if DAA is a contributing factor material to the determination that the individual is disabled. In determining materiality, SSR 13-2p lays out a six-step DAA evaluation process:

1. Does the claimant have DAA?
 - a. No-No DAA materiality determination necessary.
 - b. Yes-Go to step 2.
2. Is the claimant disabled considering all impairments, including DAA?
 - a. No-Do not determine DAA materiality. (Denial.)
 - b. Yes-Go to step 3.
3. Is DAA the only impairment?
 - a. Yes-DAA material. (Denial.)
 - b. No-Go to step 4.
4. Is the other impairment(s) disabling by itself while the claimant is dependent upon or abusing drugs or alcohol?
 - a. No-DAA material. (Denial.)
 - b. Yes-Go to step 5.

5. Does the DAA cause or affect the claimant's medically determinable impairment(s)?
 - a. No-DAA not material. (Allowance.)
 - b. Yes, but the other impairment(s) is irreversible or could not improve to the point of nondisability- DAA not material. (Allowance.)
 - c. Yes, and DAA could be material- Go to step 6
6. Would the other impairment(s) improve to the point of nondisability in the absence of DAA?
 - a. Yes-DAA material. (Denial.)
 - b. No-DAA not material (Allowance.)

Petitioner's counsel argues that ALJ Gardocki was required to apply the sequential analysis to his DAA analysis. However, contrary to Petitioner's counsel's assertions, SSR 13-2p, ¶ 5 expressly provides that adjudicators are **not** required to apply the sequential process in the order provided and may go directly to the step at issue in the case.

In this case, Petitioner had a medically determinable impairment (MDI) due to his mental condition as well as DAA, and his MDI was disabling while Petitioner was abusing drugs and alcohol. Therefore, the DAA analysis could jump to the fifth step, consideration of whether Petitioner's DAA caused or affected his MDI. Because Petitioner's alcohol consumption could affect his mental status and in fact alcohol consumption was referenced in each of his hospitalizations and because there was no evidence that Petitioner's mental impairment was irreversible or could not improve to the point of nondisability, DAA could be material to Petitioner's mental MDI. The determination of whether Petitioner's DAA is material to his disability is therefore dependent on an analysis of step 6 of the DAA evaluation process: would Petitioner's other impairment improve to the point of non-disability in the absence of DAA? This requires projection of the severity of the individual's other impairments in the absence of DAA, based on the case record and medical judgments about the likely remaining medical findings and functional limitations the individual would have in the absence of DAA. SSR 13-2p, ¶ 5. To support a finding that DAA is material where a client has co-occurring mental disorders, there must be evidence in the case record that the client would not be disabled in the absence of DAA. SR 13-2p, ¶ 7. A record of multiple hospitalizations, emergency department visits, or other treatment for the co-occurring mental disorder- with or without treatment for DAA- is indicative that DAA may not be material even if the client is discharged in improved condition after each intervention. *Id.*

In this case, the medical record shows that Petitioner alleged auditory hallucinations beginning in his youth, had a suicide attempt prior to [REDACTED] 2017, and suicidal ideation in connection with both his [REDACTED] 2017 and [REDACTED] 2017 hospitalizations (Exhibit 1, p. 86). His hospitalization in [REDACTED] 2017 was triggered by excessive alcohol consumption and a suicide attempt. While at the hospital he took a handful of

medication although he denied he was attempting to commit suicide. During his hospitalization, Petitioner was diagnosed with unspecified psychotic disorder, unspecified bipolar disorder, and severe alcohol use disorder and there was reference to a past medical history of schizoaffective disorder, bipolar type, posttraumatic disorder and alcohol dependence (Exhibit 1, pp. 57, 85). He was advised of the effects of alcohol use disorder and his need to abstain from alcohol; the hospital notes indicate he acknowledged his need to abstain. (Exhibit 1, pp. 34, 37, 45, 50, 56.) He was assessed at a high risk of suicide, with his alcohol withdrawal elevating his risk (Exhibit 1, p. 89). He was transferred to the inpatient mental health unit for further management of his schizoaffective disorder (Exhibit 1, pp. 57).

Petitioner went to the hospital emergency department on [REDACTED], 2017 with complaints of abdominal pain with nausea and vomiting and informed hospital personnel that he was frustrated and wanted to kill himself due to the pain. He admitted drinking seven to eight alcoholic drinks daily, the last 30 minutes prior to arrival at the hospital. (Exhibit 2, pp. 2, 4). Following the discharge, he participated in a partial hospitalization assessment due to his suicidal ideation. At that time, he admitted that he had a recent relapse but reported that he had not had any alcohol in the past month. (Exhibit 3, pp. 111-119). In his discharge summary dated [REDACTED] 2017, his diagnosis was changed to major depressive disorder, recurrent, moderate. It was noted that his GAF was 50 and he was discharged from PHP with a decrease in depression, denied hallucinations, increase in sleep and appetite, and increase in coping skills (Exhibit 3, pp. 12-15).

The medical record supports a finding that alcohol use may contribute to Petitioner's mental health issues. However, the evidence does not show that his mental health would improve to the point of non-disability in the absence of DAA. Petitioner had two hospitalizations within nine months, and although alcohol use preceded both admissions, both incidents also involved suicidal behavior or ideation. Petitioner has a long history of psychological issues and has been diagnosed with severe mental illness. Although he was released from the partial hospitalization in [REDACTED] 2017 in improved mental condition, he was in a highly-monitored, regimented environment and heavily medicated to treat his mental condition. Accordingly, DAA is not material to the finding that Petitioner is disabled. Because DAA is not a contributing factor material to Petitioner's disability, Petitioner is disabled at step 3 and the Department improperly denied his SDA application on the basis that he was not disabled.

DECISION AND ORDER

Accordingly, the ALJ's decision is **REVERSED**.

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

1. Reregister and reprocess Petitioner's [REDACTED] 2016 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. If Petitioner is otherwise eligible and qualified for SDA, supplement him for lost benefits he was entitled to receive from the date of application;
3. Review Petitioner's continued eligibility in September 2018.

ACE/tm



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System.

Authorized Hearing Rep.

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