[redacted]

Date Mailed: March 15, 2018
MAHS Docket No.: 18-001021
Agency No.: [redacted]
Petitioner: [redacted]

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 March 8, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted], 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 November 29, 2017, Petitioner applied for SDA benefits.

2. Petitioner's only basis for SDA benefits was as a disabled individual.

3. On January 10, 2018, the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit A, pp. 10-28).

4. On January 19, 2018, MDHHS denied Petitioner's application for SDA benefits.

5. On January 25, 2018, Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit A, p. 8)

6. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.

7. As of the date of the administrative hearing, Petitioner was a [redacted]-year-old male.

8. Petitioner has extreme concentration restrictions due to hallucinations related to schizophrenia.

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 the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Benefit Notice (Exhibit 1, pp. 6-7) dated January 19, 2018, verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (April 2017), p. 5. 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 (April 2017), p. 1. A person is disabled for SDA purposes if he or she meets any of the following criteria:

- Receives other specified disability-related benefits or services….
- Resides in a qualified Special Living Arrangement (SLA) facility.
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS)...

Id., pp. 1-2.

When the person does not meet one of the [above] criteria, [MDHHS is to] follow the instructions in BAM 815, Medical Determination and Disability Determination Service (DDS), Steps for Medical Determination Applications. *Id*., p. 4. The DDS will gather and review the medical evidence and either certify or deny the disability claim based on the medical evidence. *Id*. The review of medical evidence is primarily outlined by federal law.

Petitioner alleged being unable to work for at least 90 days. Petitioner alleged no other basis for SDA eligibility.

Generally, state agencies must use the same definition of disability as used for Supplemental Security Income (SSI) (see 42 C.F.R. § 435.540(a)). [Federal] law defines disability 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 C.F.R. § 416.905(a). MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015), p. 10). The same definition applies to SDA, though SDA eligibility factors only a 90-day period of disability. The remainder of the analysis considers the specific disability evaluation set forth by federal SSI regulations.

In general, you have to prove… that you are blind or disabled. 20 C.F.R. § 416.912(a). You must inform us about or submit all evidence known… that relates to whether or not you are blind or disabled. *Id*. Evidence includes but is not limited to objective medical evidence (e.g., medical signs and laboratory findings), evidence from other medical sources (e.g., medical history and opinions), and non-medical statements about symptoms (e.g., testimony) (see *Id*.).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled (see 20 C.F.R. § 416.920). If there is no finding of disability or lack of disability at each step, the process moves to the next step (see *Id*.)

The first step in the process considers a person's current work activity (see 20 C.F.R. § 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 2017 monthly income limit considered SGA for non-blind individuals is $1,170.00.

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*.

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.

At the second step, we consider the medical severity of your impairment(s). 20 C.F.R. §416.920 (a)(4)(ii). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. *Id*.

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 F2d 860, 862 (6th Cir. 1988). Similarly, SSR 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).

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. 20 C.F.R. § 416.920 (5)(c). We will not consider your age, education, and work experience. *Id*. The second step analysis will begin with a summary of presented medical documentation and Petitioner's testimony.

Various Michigan Department of Corrections medical records (Exhibit A, pp. 504-517) from 2013-2015 were presented. Dental cleaning and immunizations were documented.

Various notes from a case manager (Exhibit A, pp. 257-487) dated from [redacted], were presented. Generally, the notes documented Petitioner's increase in compliance with attending group therapy. It was also noted that Petitioner was incarcerated for the majority of the period that the notes were made.

A Psychiatric Evaluation (Exhibit A, pp. 488-492) dated [redacted], was presented. It was noted Petitioner presented after being released from jail that day. A history of cocaine and marijuana usage was noted. Reported psychiatric symptoms included audio hallucinations, visual hallucinations, anxiety, depression, life stressors, poor appetite, racing thoughts, anhedonia, hopelessness, and concentration difficulties. Saphris was prescribed for psychotic symptoms. Diagnoses included schizoaffective disorder (bipolar type) and cocaine dependence.

Medical encounter notes (Exhibit A, pp. 154-156) dated [redacted], were presented. It was noted Petitioner presented to establish care. Diagnoses of lumbar disc disease and psychiatric disorders were noted.

Initial Bio-Psycho-Social Assessments (Exhibit A, pp. 166-175) were presented. It was noted Petitioner was first assessed on [redacted], while incarcerated, after requesting assistance with mental health. It was noted Petitioner was also assessed on [redacted]. Both assessments were completed by a social worker from a treating mental health agency. Crack cocaine use was noted from previous year. Reported

symptoms included life stressors, poor appetite, anhedonia, concentration difficulty, lack of energy, racing thoughts, hopelessness. It was noted Petitioner reported audio hallucinations of a girlfriend who committed suicide. It was noted that Petitioner reported that he believes people on television are sometimes watching him. It was noted Petitioner reported not sleeping for two months because he thought someone was in his room watching him. Petitioner reported difficulty in sensing what shapes and faces are real.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 241-245) dated [redacted], were presented. It was noted that Petitioner's case manager concluded that Petitioner has increased paranoia after Petitioner could not wait for an appointment. Saphris was prescribed.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 235-240) dated [redacted], were presented. "Severe" PTSD symptomology was noted (see Exhibit A, p. 229). Ongoing audio hallucinations of someone "out to target" Petitioner were noted. Nightmares and flashbacks were noted as reported. It was noted Saphris was helping to reduce Petitioner's nightmares but also resulted in over-sedation. A plan of decreasing Saphris was noted.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 228-234) dated [redacted], were presented. It was noted medications were helping, but Petitioner still had residual psychosis. Prazosin was noted to help reduce nightmares. Petitioner reported having "good days" twice per week. It was noted that Petitioner reported hearing voices of an ex-girlfriend and a demon.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 220-227) dated [redacted], were presented. It was noted Petitioner absconded from a residential infirmary and was arrested. It was noted Petitioner was not on medication since [redacted]. Reported symptoms included mood swings, anxiety, and poor sleep. It was noted that it is assumed that Petitioner's recent mania was triggered by start of Trazodone. Abilify, Seroquel, prazosin, and QHS were prescribed.

An Annual Bio-Psycho-Social Assessment (Exhibit A, pp. 161-165) dated [redacted] was presented. It was noted Petitioner returned for treatment after recent incarceration. It was noted Petitioner does not use good judgment and shows difficulty in following through on treatment. Reported symptoms by Petitioner included the following: severe anxiety over life stressors, insomnia, poor appetite, difficulty with concentration, racing thoughts, lack of energy, and hopelessness. Mental status assessments included fearful and anxious mood, soft speech, reported daily hallucinations, poor insight, poor judgment, and poor impulse control (as evidenced by Petitioner cutting off a tether). Recommended services included assistance with housing, substance abuse treatment, and monthly meetings.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 211-219) dated [redacted], were presented. It was noted Petitioner returned after a hiatus of 8 months due to incarceration. Incarceration was noted to be, in part, due to Petitioner removing a tether while on parole for armed robbery. It was noted that Petitioner was on meds for 1-2 weeks before being incarcerated. It was noted Petitioner was using crack cocaine at time. Abilify, Seroquel, prazosin, and QHS were prescribed.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 202-210) dated [redacted], were presented. Lab work was noted as performed; lithium was increased.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 193-201) dated [redacted], were presented. Lab work was noted as performed; lithium was increased.

Case manager meeting notes dated [redacted] (Exhibit A, pp. 255-256) were presented. It was noted Petitioner hoped to return to residence at a county infirmary.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 184-192) dated [redacted], were presented. Ongoing paranoia, depression, and worsening of psychotic symptoms were noted. It was noted Petitioner's medical insurance ended.

Case manager meeting notes dated [redacted] (Exhibit A, pp. 253-254) were presented. It was noted Petitioner would soon get health insurance reinstated

Case manager meeting notes dated [redacted] (Exhibit A, pp. 251-252) were presented. Audio hallucinations were noted to be currently manageable. Petitioner reported "fine" sleeping and eating. A plan of residence at the county infirmary was noted.

Case manager meeting notes dated [redacted] (Exhibit A, pp. 248-249) from unspecified mental health agency staff were presented. It was noted Petitioner was compliant with group therapy attendance. Audio hallucinations were noted to be currently manageable. Petitioner reported "fine" sleeping and eating.

Case manager meeting notes dated [redacted] (Exhibit A, pp. 246-247) from unspecified mental health agency staff were presented. It was noted Petitioner reported "doing pretty good" and that he was alert and positive.

Medical encounter notes (Exhibit A, pp. 153-154) dated [redacted], were presented. Examination of Petitioner was performed by a person with unstated credentials. It was noted Petitioner presented for completion of unspecified paperwork.

Psychiatric medication review notes from a treating mental health agency (Exhibit A, pp. 176-183) dated [redacted], were presented. Petitioner reported ongoing video and hallucinations, paranoid thoughts, 3½ - 6½ hours per sleep (with 3-4 awakenings), depression 3-4 times per week, drug cravings, Seroquel and Cogentin were increased. Petitioner's mood was "moderately stable" as Petitioner "cycles in and out of mild depression". Psychotic symptoms were deemed to be moderately well controlled though residual voices and paranoid thoughts were also noted.

A mental status examination report (Exhibit A, pp. 140-13) dated [redacted], was presented. The report was noted as completed by a consultative psychiatrist. The following mental health symptoms were reported by Petitioner: fatiguing depression, crying spells, sleeping problems, loss of appetite, paranoid thought, fidgetiness, and audio hallucinations. Noted observations of Petitioner made by the consultative examiner include the following: good contact with reality, no pressured speech, and good hygiene. It was noted Petitioner gave information, followed simple instruction, and performed cognitively well. A diagnosis of depression with anxious distress was noted. A guarded prognosis was noted.

Medication documentation (Exhibit 1, pp. 3-4) from March 2018 was presented. Prescribed medications included prazosin, quetiapine, lithium, Fanapt, acetaminophen, Sulindac, and benztropine.

Petitioner alleged impairments, in part, due to a bulging spinal disc and pain. Petitioner testified his back has especially hurt over the last month. Petitioner testified he has not attempted physical therapy or chiropractic adjustments. Petitioner testified he takes NASAIDs for pain. Petitioner testified he does not us a cane or walker for ambulation. Petitioner testified he is limited to waking of 20 minute periods and standing for 60 minute periods due to pain. Petitioner testified back pain does not affect his ability to bathe, perform housework, do laundry, or shop. Petitioner testified that bending is difficult and that the pain affects his dressing.

Presented records verified Petitioner takes two pain medications (acetaminophen and Sulindac). Prescriptions for the medications suggest some degree of back pain. Petitioner failed to present any other medical treatment for back pain. Spinal radiology was not presented. Physical therapy was apparently never prescribed. Physical restrictions were not documented.

Petitioner alleged impairments, in part, based on hand shaking. Petitioner testified he experiences hand shaking for 20 minute periods over 3-4 times per week. Petitioner testified he is unaware of the cause. Petitioner presented no documentation suggesting any impairments related to hand shaking.

Based on the lack of objective medical evidence and limited history of documented treatments, it is found that Petitioner failed to establish severe exertional impairments. The analysis will proceed to consider Petitioner's non-exertional impairments.

Petitioner testified he has heard voices in his head since he was in his [redacted] Petitioner testified he hears mainly three different voices. Petitioner testified one is his ex-girlfriend who committed suicide; Petitioner testified he thinks his ex-girlfriend wants Petitioner to kill himself so he can be with her. Petitioner also testified he feels guilty because he was not there when his ex-girlfriend killed herself. Petitioner testified that a second voice (which Petitioner named "[redacted] tells Petitioner when people are trying to hurt him. Petitioner testified a third voice is like "a demon" who tells Petitioner that hellfire will kill Petitioner.

Petitioner testified he has resided in an infirmary over the past 8 months. Petitioner testified the voices have decreased since he began residing in a county infirmary, though he hears the voice daily and for "most" of the day. Petitioner testified his treatments include seeing a psychiatrist every 6 weeks and a counselor every 30 days. Petitioner testified he is a "little better" since residing in an infirmary. Petitioner testified that he experienced an increase in the aggression of the voices over the previous two weeks. Petitioner testified that the voices are most noticeable when he is trying to sleep. Petitioner testified that the voices render it difficult for him to focus and determine what is real.

Presented records generally verified degrees of concentration and social interaction restrictions due to schizoaffective disorder. Petitioner's treatment history was established to have lasted at least 90 days and at least since Petitioner's date of SDA application. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

At the third step, we also consider the medical severity of your impairment(s). 20 C.F.R. § 416.920 (4)(iii). If you have an impairment(s) that meets or equal one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. *Id*. If you have an impairment(s) which meets the duration requirement and is listed in appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. *Id*. 20 C.F.R. § 416.920 (d).

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***:
> **Schizophrenic spectrum and other psychotic disorders (see 12.00B2), satisfied by A and B, or A and C:**
> A. Medical documentation of one or more of the following:
> 1. Delusions or hallucinations;
> 2. Disorganized thinking (speech); or
> 3. Grossly disorganized behavior or catatonia.

AND

B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 12.00F):
    1. Understand, remember, or apply information (see 12.00E1).
    2. Interact with others (see 12.00E2).
    3. Concentrate, persist, or maintain pace (see 12.00E3).
    4. Adapt or manage oneself (see 12.00E4).

OR

C. Your mental disorder in this listing category is "serious and persistent;" that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
    1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and
    2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 12.00G2c).

Petitioner's treatment records established a symptomology history which included ongoing audio hallucinations. It is found that Petitioner meets Part A of the listing for psychotic disorders.

Generally, schizoaffective disorder, by itself, is highly indicative of a "serious and persistent" disorder. Petitioner's description of daily audio hallucinations, including those of a demon are indicative of "serious and persistent" symptoms. Petitioner's reporting of audio hallucinations were consistent with reporting to medical treaters.

Petitioner testified he has never been hospitalized. Generally, an absence of psychiatric hospitalizations is indicative of symptoms that do not meet listing requirements. It would seem that Petitioner's recent absence of hospitalizations could also be explained by consistently living in residences which offer on-site medical assistance.

Treatment records established that Petitioner's residence fluctuated between jail and a county infirmary. Petitioner testified he lived with a girlfriend in 2015 but has not had his own residence since 2004. Petitioner's history of non-independent living residences is consistent with reliance on highly structured settings.

Petitioner's symptomology appears to result in a loss of impulse and poor judgment. It was verified that Petitioner was incarcerated recurrently, including cutting off his tether, over the past few years. Petitioner's actions leading to incarcerated are consistent with loss of impulse and judgment indicative of a need for a "highly structured" setting.

It is notable that case manager records from July 2017 appeared to document reductions in psychotic symptoms. Though Petitioner has shown improvement, it is notable that Petitioner's improvement occurred while residing in an infirmary whereby Petitioner's stressors should be minimized. It is also notable that increases in symptoms

were later reported. Petitioner's difficulty in controlling symptoms are indicative of "marginal adjustment" despite residence in an ongoing medical facility.

Consideration was given to factoring Petitioner's drug usage as a contributor to Petitioner's symptomology. Petitioner testified he last used crack cocaine two years earlier, at a time he was not being treated for mental health. Petitioner testified he used drugs to decrease the voices in his head. Petitioner's explanation for drug usage is consistent with drug usage as a symptom of schizoaffective disorder rather than a cause of symptoms. Thus, Petitioner's drug usage is not deemed to be material to a disability finding.

It is found that Petitioner meets the listing for schizoaffective disorders. Thus, Petitioner is disabled and it is found that MDHHS improperly denied Petitioner's application for SDA benefits.

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 November 29, 2017;
(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**.

CG/

Christian Gardocki
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 (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party

requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[redacted]

Petitioner

[redacted]