



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 28, 2018
MAHS Docket No.: 18-004706
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on July 10, 2018, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner's mother, [REDACTED] also appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist Chukwuma Oguejiofor and Family Independence Manager Yvette Bishop-Turnbull. Mr. Oguejiofor and Ms. Bishop-Turnbull testified on behalf of the Department.

The record in this case remained open to allow the Department time to submit Petitioner's voluminous medical records which were not included in the hearing packet.

On July 12, 2018, this Administrative Law Judge issued an Interim Order Extending the Record for 60 days, ordering the Department to schedule a psychiatric examination of Petitioner and forward the results to this Administrative Law Judge for review and inclusion in the case file.

On July 13, 2018, the Department submitted Petitioner's medical records as exhibits A (pages 1-129); B (pages 1-197); C (pages 1-201); D (pages 1-201); E (pages 1-201); and F (pages 1-84). Exhibits A through F, for a total of 1,013 pages, which were admitted into evidence.

As of the date of this decision, the Department has failed to submit the additional ordered psychiatric evaluation.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On [REDACTED], 2018, Petitioner applied for the SDA program. [Dept. Exh. 1].
2. On May 17, 2018, Petitioner submitted a request for hearing. [Dept. Exh. 2].
3. On April 17, 2018, the Medical Review Team denied Petitioner's SDA application. [Dept. Exh. 3-9].
4. Petitioner reported a learning disability, depression, schizophrenia, diabetes, bipolar disorder, and having homicidal and suicidal thoughts and anxiety.
5. On [REDACTED], 2004, Petitioner underwent a psychological examination when he was [REDACTED]-years-old. At that time, he was diagnosed with a reading disorder and borderline intellectual functioning. [Dept. Exh. F, pp 78-84].
6. On [REDACTED], 2011, Petitioner was undergoing a Mental Status examination and a clinical study was administered on behalf of the Department. The examining psychologist opined that Petitioner's ability to relate to others, including coworkers, customers/clients, and supervisors was essentially intact, and that ability is prepared for entry level employment at low levels of skill. His ability to understand, remember and to carry out familiar and simple tasks are essentially intact, though untested, as yet by employment situations. His ability to focus and sustain attention to simple relevant occupational tasks is similarly intact and operational. Petitioner's readiness to try to withstand or otherwise cope with the stresses of ordinary simple occupational activity is adequate. His low intelligence will limit him, at least at first, to menial and semi-skilled work tasks, and to tasks that require low levels of understanding. Petitioner was diagnosed with a learning disorder. [Dept. Exh. C, pp 97-104].
7. On [REDACTED], 2013, Petitioner was involuntarily admitted to inpatient psychiatric at St. Joseph Mercy Hospital in Ann Arbor. Petitioner stated that he had just been bottling things up and not dealing with them and he let his anger get the best of him. He stated that he brother steals money, does drugs, and trashes the house. Petitioner explained that he just wanted to knock some sense into his brother, not kill him. Petitioner explained that he took a knife and started swinging it and his brother's arm got cut. His brother received 7 stitches. Petitioner reported hearing voices off and on, but only when he gets upset. The voices never tell him to do

anything, they are just voices talking in the background. Petitioner was discharged on [REDACTED], 2013. [Dept. Exh. D, pp 2-8; pp 11-71 were blank].

8. On [REDACTED], 2015, Petitioner underwent a Mental Status Exam. Petitioner reported multiple disabilities to include, a learning disorder, bipolar disorder, schizophrenia, sleep apnea, and obesity. The examining psychologist noted that Petitioner was also tested in 2011 and found to be functioning within the borderline range of intelligence. Petitioner reported both visual and auditory hallucinations. Petitioner reported that he was hospitalized at [REDACTED], [REDACTED], last year. Petitioner was diagnosed with Bipolar I disorder with psychotic features and Borderline intellectual functioning with related learning disorder. His prognosis was guarded to poor. [Dept. Exh. C, pp 92-96].
9. On [REDACTED], 2017, Petitioner was admitted to the [REDACTED] due to increased auditory hallucinations, paranoid delusional thinking and homicidal ideations. Petitioner had been off his antipsychotic medications for over one year because they made him feel numb. Petitioner also had a reduced ability to perform his activities of daily living. Petitioner's mother transported him to U of M after he reportedly threatened his brother with a knife during an altercation. Petitioner reported he felt out of control and tried to pick up a knife, but his mother began choking him and punching him until he dropped the knife. Petitioner denied any intent to kill his brother. He shared that lately he had increased depression due to having no job or girlfriend. Petitioner has a history of Bipolar Disorder and Schizoaffective Disorder with history of inpatient psychiatric hospitalizations. Petitioner also has a history of homicidal ideations per his chart review. Petitioner stabbed his father at the age of 16 years, trying to defend his mother from domestic violence. He currently lives in Washtenaw County and is active at [REDACTED]. Petitioner also reported he hears two voices but reports that they do not talk to one another. He also reports that he can feel people's energy. He indicated that the TV talks to him and specifically a diabetes medication advertisement. Petitioner was diagnosed with homicidal ideations/psychosis and medically cleared at [REDACTED] to be transferred by ambulance as a direct admission to Inpatient [REDACTED]. [Dept. Exh. E, p 36;138-146].
10. On [REDACTED], 2017, Petitioner underwent a psychiatric evaluation at [REDACTED]. He arrived with his mother post-hospitalization. He had been hospitalized at [REDACTED] (his second hospitalization) after pulling a knife on his brother about two months ago. There he was reportedly given varied diagnoses including schizophrenia, schizoaffective disorder and bipolar disorder. In the past he discontinued his care at [REDACTED] because he had been overwhelmed by the number of his medications. Petitioner continues to hear voices, breathing, or "ghosts," and will occasionally see shadows/silhouettes as well. These dissipate when he is taking medication. He occasionally feels as if he is being watched. When he is provoked, he experiences rage and has been physically aggressive, but recently he has had verbal outbursts. In the past he did

stab a sibling. The psychologist indicated that Petitioner's mood was sad, tearful and anxious. His insight and judgment were limited. The examining psychologist opined that Petitioner has a significant history of mood lability and impulsivity maintained on a combination of medications. The symptoms are exacerbated by his reluctance to engage in therapy, physical activity, or social interaction. [Dept. Exh. F, pp 28-36].

11. Petitioner has a history of depressive, bipolar and related disorders, schizoaffective disorder, learning disability, reading disorder, borderline intellectual functioning, intermittent explosive disorder, schizophrenia, uncontrolled diabetes, obesity, hyperglycemia, and obstructive sleep apnea.
12. Petitioner is a [REDACTED]-year-old male, born on [REDACTED], 1992. He is 6'1" and 271 pounds. He attended special education classes his entire academic career and completed high school.
13. Petitioner was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the

minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months [90 days for SDA]. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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

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

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is

assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity. Therefore, he is not disqualified from receiving disability benefits under Step 1.

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

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

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may

still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, has a history of depressive, bipolar and related disorders, schizoaffective disorder, learning disability, reading disorder, borderline intellectual functioning, intermittent explosive disorder, schizophrenia, uncontrolled diabetes, obesity, hyperglycemia, and obstructive sleep apnea. He also has three previous psychiatric evaluations, and a history of stabbing his father and his brother.

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

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

In the above-captioned matter, Petitioner underwent an independent psychological evaluation on behalf of the Department in 2011. While the evaluation does indicate Petitioner is able to understand, remember, and complete simple and repetitive tasks, great care must be exercised in reaching conclusions about Petitioner's ability or inability to complete tasks under the stresses of employment during a normal workday or workweek based on a time-limited mental status examination or psychological testing by a clinician, or based on Petitioner's ability to complete tasks in other settings that are less demanding, highly structured, or more supportive. Petitioner's ability to complete tasks must be assessed by evaluating all the evidence, with an emphasis on how independently, appropriately, and effectively Petitioner is able to complete tasks on a sustained basis. Impairment Listing 12.00C3.

The Petitioner also had a mental status evaluation in 2015. Petitioner reported multiple disabilities to include a learning disorder, bipolar disorder, schizophrenia, sleep apnea, and obesity. The examining psychologist noted that Petitioner was also tested in 2011 and found to be functioning within the borderline range of intelligence. Petitioner indicated both visual and auditory hallucinations. Petitioner reported that he was hospitalized at [REDACTED] last year. Petitioner was diagnosed with Bipolar I disorder with psychotic features and Borderline intellectual functioning with a related learning disorder. His prognosis was guarded to poor.

In 2017, Petitioner underwent a psychiatric evaluation at [REDACTED]. He arrived with his mother post-hospitalization. He had been hospitalized at Ithaca (his second hospitalization) after pulling a knife on his brother about two months ago. There he was reportedly given varied diagnoses including schizophrenia, schizoaffective disorder and bipolar disorder. In the past he discontinued his care at CMH because he had been overwhelmed by the number of his medications. Petitioner continues to hear voices, breathing, or "ghosts," and will occasionally see shadows/silhouettes as well. These dissipate when he is taking medication. He occasionally feels as if he is being watched. When he is provoked, he experiences rage and has been physically aggressive, but recently he has had verbal outbursts. In the past he did stab a sibling. The psychologist indicated that Petitioner's mood was sad, tearful and anxious. His insight and judgment were limited. The examining psychologist opined that Petitioner has a significant history of mood lability and impulsivity maintained on a combination of medications. The symptoms are exacerbated by his reluctance to engage in therapy, physical activity, or social interaction.

An updated psychiatric evaluation was ordered in 2018 and was not completed.

Social Security Listing 12.04 Depressive, bipolar and related disorders (see 12.00B3), satisfied by A and B:

- A. Medical documentation of the requirements of paragraph 1 or 2:
 - 1. Depressive disorder, characterized by five or more of the following:
 - a. Depressed mood;
 - b. Diminished interest in almost all activities;
 - c. Appetite disturbance with change in weight;
 - d. Sleep disturbance;
 - e. Observable psychomotor agitation or retardation;
 - f. Decreased energy;
 - g. Feelings of guilt or worthlessness;
 - h. Difficulty concentrating or thinking; or
 - i. Thoughts of death or suicide.
- B. 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).

In this case, the evidence of record shows Petitioner has a depressed mood, diminished interest in almost all activities, appetite disturbance with change in weight, decreased energy and thoughts of death or suicide AND he has received medical treatment that

diminishes the symptoms and signs of his mental illness AND has made a marginal adjustment to adapt to changes in his environment.

Listing 12.00 (Mental Disorders-Adult) was considered in light of the objective evidence. Based on the foregoing, it is found that Petitioner's impairments meet the intent and severity requirement of a listed impairment; therefore, Petitioner is found disabled at Step 3.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Petitioner has been found "disabled" for purposes of Medicaid, he must also be found "disabled" for purposes of SDA benefits. Consequently, the Department's denial of Petitioner's April 12, 2018 SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is REVERSED, and it is Ordered that:

1. The Department shall process Petitioner's April 12, 2018 SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in October of 2019, unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain **updated** medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is **SO ORDERED**.

VLA/nr



Vicki L. Armstrong
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) 763-0155; 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

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