STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [redacted],

Claimant

Reg. No.: 2008-12455
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
February 26, 2009
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Sterling Heights, Michigan on February 25, 2009. The Claimant appeared and testified. The Claimant was represented by [redacted]. Patricia Bailey appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") retroactive from October 2006?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P retroactive from October 2006 on November 9, 2006.

2. On June 5, 2007, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant capable of performing past relevant work for MA-P purposes. (Exhibit 1, pp. 277, 278)

3. On August 3, 2007, the Department sent the Claimant an eligibility notice informing the Claimant she was not eligible for MA-P benefits. (Exhibit 2)

4. On October 30, 2007, the Department received the Claimant's Request for Hearing protesting the determination that the Claimant was not disabled. (Exhibit 3)

5. On December 29, 2008, the State Hearing Review Team ("SHRT") determined the Claimant was not disabled based upon insufficent evidence. (Exhibit 4, pp. 1, 2)

6. The Claimant's alleged physical disabling impairments are due to chronic back pain, degenerative disc disease, arthritis, scoliosis, carpal tunnel, vascular necrosis, hypertension, thyroid disease, chronic obstructive pulmonary disease ("COPD"), colitits, pancreatitis, diverticulosis, and Gastric Esophageal Reflux Disease ("GERD").

7. The Claimant's alleged mental disabling impairments are due to obsessive compulsive disorder, bipolar disorder, and depression.

8. At the time of hearing, the Claimant was 57 years old with a [redacted] birth date; was 5'4" and weighed 125 pounds.

9. The Claimant graduated from highschool and completed 2 years of college.

10. The Claimant has a work history of working in a deli, as a waitress, at a veterinary hospital, and as a short order cook.

11. The Claimant's impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

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. 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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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 416.929(a)

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 applicants 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 (i.e. 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 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 three to step four. 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 four and five. 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 addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a (a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a (b) (1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a (e) (2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.;* 20 CFR 416.920a(c) (2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c) (1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c) (3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a (d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a (d) (2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a (d) (3)

As previously stated, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a) (4) (i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in 2004. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant 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 means 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 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, the Claimant alleges disability based on physical disabling impairments due to chronic back pain, degenerative disc disease, arthritis, scoliosis, carpal tunnel, vascular necrosis, hypertension, thyroid disease, chronic obstructive pulmonary disease ("COPD"), colitits, pancreatitis, diverticulosis, and Gastric Esophageal Reflux Disease ("GERD"). Mental impairments asserted are obsessive compulsive disorder, bipolar disorder and depression.

In support of the Claimant's position, several older records were submitted from 2004 and 2005 which documented treatment for physical and psychological issues coupled with substance abuse. The medical documentation was submitted with prior applications and which resulted in denials. In November of 2005, a possible suicide attempt via drug overdose was documented. In October of 2005, the Claimant was denied MA-P based upon a final determination from the Social Security Administration.

A Medical Examination Report was completed on the Claimant's behalf and based upon a September 11, 2006 examination. The current impairments were listed as alcohol dependence, depression, lumbar disc disease, hypothyroid and hypertension. The physical examination was normal and the Claimant's condition was listed as stable. The Claimant was limited to occasional lifting up to 10 pounds, with standing and/or walking less than 2 hours during an 8

hour workday. There were no restrictions on the Claimant's ability to perform repetitive actions with her extremities.

On October 8, 2006, the Claimant was admitted to [redacted] after complaints of abdominal pain with diarrhea. Laboratory studies were benign with only a mild elevation of white blood cell count. An abdominal computed tomography scan documented diffuse colitis and two liver cysts. Diverticulosis of the sigmoid was also noted. The Claimant was treated with antibiotics and discharged on October 14th with a discharge diagnosis of abdominal pain, colitis, and bipolar disorder.

From November 6, 2006 through April 17, 2007, the Claimant was evaluated at the [redacted] on a near monthly basis. The diagnoses were listed as Bipolar disorder with alcohol dependence and personality disorder, not otherwise specified. The Claimant's Global Assessment Function was 61 and the Claimant was in stable condition.

On January 26, 2007, a Medical Examination Report was completed on the Claimant's behalf which listed the Claimant's impairments as diverticulitis, COPD, Bipolar disorder, lumbar disc disease, hypothyroid, and coronary artery disease. The physical examination documented a decrease range of motion. The Claimant's condition was found to be deteriorating and she was limited to occasionally lifting less than 10 pounds and standing and/or walking less than 2 hours in an 8-hour day. The Claimant did not require an assistive device and was unable to perform repetitive actions with either upper extremity. No mental limitations were noted.

On April 28, 2007, an MRI study of the Claimant's lumbar and cervical spine was performed. Minimal grade I spondylolisthesis of L4 on L5 was found. Curvature and alignment of the vertebral bodies were intact although degenerative changes were noted of the L5-S1 disc with degenerative signal changes in the endplates and small osteophytes. Disc spaces were

relatively intact throughout the lumbar spine. No other significant focal abnormality was identified. Mild diffuse posterior disc bulging at L4-L5 was noted which was not spinal stenosis. Signal changes were seen in the left femoral head compatible with a vascular necrosis which may have contributed to the Claimant's clinical symptoms.

On May 23, 2007, the Claimant was examined at the [redacted] for evaluation of her back, neck, and left hip pain. Prior x-rays were reviewed which showed significant degenerative change in the lower lumbar spine particularly around the L5-S1. Some lumbar scoliosis was noted. The MRI report showed degenerative disc change at C4-C5 in the neck with a very small herniation at the same level without neural compromise. Small disc herniation was also at C5-C6 and C6-C7. Grade-I spondylolisthesis of L4 on L5 was documented with a disc bulge at L4-L5 along with some neuroforaminal encroachment. Ultimately, the Claimant was diagnosed with chronic pain mostly of musculoskeletal origin with significant degenerative changes in the cervical and lumbar spine with possible early a vascular necrosis of the left femoral head. An EMG and x-ray of the left hip was recommended and an epidural and physical therapy was ordered.

On June 19, 2007, the Claimant was re-evaluated regarding her chronic lumbosacral pain with spondylolisthesis and spondylosis. The first epidural was not successful but a second one was recommended. Increased back pain and poor flexibility of the back was noted. Lower extremity sensation and strength were normal.

On July 18th, the Claimant presented for a follow-up appointment for her chronic low back pain. An EMG documented mild right carpal tunnel syndrome. An MRI of the back found a possible a vascular necrosis of the left hip however no formal x-ray of the hip was performed.

The physical examination found fairly good back mobility with normal strength in the lower extremities albeit with left hip irritability. The Claimant was prescribed a splint and Lortab.

On July 21st, progress notes from the [redacted] document significant increase in depressive symptoms.

On September 19, 2007, the claimant presented to [redacted] for treatment for her chronic pain complaints. The physician documented concerns about the Claimant primary reason for follow-up treatment is for a high dose of narcotics which he (the physician) was not "comfortable prescribing to her in the absence of significant objective findings." Although some abnormalities were found in the MRI, no evidence of nerve damage of the EMGs.

On September 25, 2007, the Claimant was re-examined regarding her chronic low back pain. Straight leg irritability bilaterally was noted as well as tenderness in the pack on palpation with increasing pain with extension. A "long" discussion regarding narcotic drug addition was given. Pursuit of exercise was recommended. The Claimant was prescribed 20 mg. of Oxycontin.

On October 17, 2007, the Claimant attended a follow-up appointment for her chronic low back pain. The physical examination found the Claimant with normal strength, negative straight leg raise, but tenderness to palpation directly over the sacrum. The Claimant was prescribed [redacted] instead of [redacted] and the physician's concerns regarding the Claimant's narcotic seeking behavior were noted.

On November 27, 2007, the Claimant attended a follow-up appointment for her low back pain and for pain in the dorsum of both feet. The physician opined a simple foot sprain.

Sensation was normal as was her lower extremity strength. [redacted] patch samples were provided to the Claimant for her foot pain and she was prescribed [redacted]t for her back.

Progress notes from the [redacted] dated December 11, 2007, document the Claimant's medication compliance and request to switch medications. Increased agitation, mood swings, and sleeplessness was noted.

On January 8, 2008, the Claimant attended a follow-up appointment for her chronic low back pain. The examination found some tightness in the lumbar paraspinal but no specific trigger points were found that would be amenable to epidural injection. The Claimant's straight leg raise from a seated position was negative and the Claimant's range of motion in her hip was good. The Claimant's [redacted] and [redacted] was renewed and the Claimant was encouraged to continue with her home exercises.

On February 13, 2008, the Claimant was seen at the [redacted] for a follow-up for her chronic low back pain. The Claimant was switched from [redacted] to [redacted] In addition, mild swelling and tenderness was noted bilaterally in her knees. No tenderness was documented and the Claimant's strength was maintained.

On February 17, 2008, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as left hip strain, chronic cervical and lumbar strains, degenerative spine disease, and cervical disc herniation. The Claimant was restricted from carrying/lifting any weight and found unable to stand and/or walk more than 2 hours in an 8-hour workday as well as being unable to sit more than 6 hours during an 8-hour workday. The Claimant was found able to perform repetitive actions bilaterally with her upper extremities but was unable to perform repetitive actions with her feet/legs. The Claimant's Bipolar disorder was also noted. A December 13, 2005 Psychiatric Evaluation was referenced.

On February 19, 2008, a Mental Residual Functional Capacity was completed on the Claimant's behalf. The Claimant was found to be marked limited in her ability to understand, remember, and carry-out detailed instructions; maintain attention and concentration for extended period; perform activities within schedule; maintain regular attendance and be punctual within customary tolerances; complete a normal workday; and set realistic goals or make plans independently of others.

On May 14, 2008, the Claimant presented to [redacted] for a follow-up visit regarding her low back pain and new left foot pain. Significant tenderness to palpation on the plantar fascia just anterior to the calcaneus was noted. The back was very tight in the paraspinals with forward flexion and increasing pain with spinal extension. Strength in the lower extremities was normal. A cortisone injection for the plantar fascia was given without incident resulting in reduced pain.

On March 3, 2009, a Psychiatric Psychological Examination Report was completed on behalf of the Claimant. The December 13, 2005 Psychiatric Evaluation was referenced. Ultimately, the Claimant was found to be in stable condition with no mood depression reported. The Mental Residual Functional Capacity Assessment was completed as well which found the Claimant markedly limited in her ability to remember locations and work-like procedures; understand, remember, and carry out detailed instructions; maintain attention within a schedule or maintain regular attendance and be punctual within customary tolerances; sustain an ordinary work routine without supervision; complete a normal workday; and in her ability to set realistic goals or make plans independently of others.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the

Claimant has presented objective medical evidence establishing that she does have physical and mental limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant 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 Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts physical disabling impairment(s) due in part to chronic back, neck, and knee pain, degenerative disc disease, arthritis, scoliosis, and carpal tunnel. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b (1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general

definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b (2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In this case, the objective medical findings document the Claimant's complaints of back, neck, knee, hip, foot pain, lumbar scoliosis, carpal tunnel, and degenerative disc disease to include disc herniation however there is no evidence of nerve root compression although some neuroforaminal encroachment was noted. There was no evidence presented of major dysfunction of a joint. The January 26, 2007 Medical Examination Report documents that the Claimant is able to ambulate without an assistive device. The July 18, 2007 examination found the Claimant with fairly good back mobility with normal strength in the lower extremities. In addition, there was no positive straight leg raising test. Several records document concern regarding narcotic abuse. Ultimately, the objective medical records presented do not meet the intent and severity requirement of a listed impairment within 1.00, specifically, 1.02 and/or 1.04 thus the Claimant is not disabled under this Listing.

The Claimant has alleged physical disabling impairments due hypertension, thyroid disease, chronic obstructive pulmonary disease ("COPD"), colitits, pancreatitis, diverticulosis, and Gastric Esophageal Reflux Disease ("GERD"). Medical records document the Claimant as having hypertension, thyroid disease, diverticulosis, and colitis, however, the Claimant's only treatment for physical impairments, outside of musculoskeletal was in October of 2006 when the Claimant was treated for abdominal pain. No further treatment was document. Ultimately, the

objective medical records are insufficient to meet the intent and severity, or the equivalent thereof, of a Listing within 3.00, 4.00, and 5.00 thus the Claimant cannot be found disabled under these listings.

The Claimant also asserts mental disabling impairments due to obsessive compulsive disorder, bipolar disorder and depression. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

   a. Anhedonia or pervasive loss of interest in almost all activities; or

   b. Appetite disturbance with change in weight; or

   c. Sleep disturbance; or

   d. Psychomotor agitation or retardation; or

   e. Decreased energy; or

   f. Feelings of guilt or worthlessness; or

   g. Difficulty concentrating or thinking; or

   h. Thoughts of suicide; or

   i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

   a. Hyperactivity; or

   b. Pressure of speech; or

   c. Flight of ideas; or

   d. Inflated self-esteem; or

   e. Decreased need for sleep; or

   f. Easy distractibility; or

   g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

   h. Hallucinations, delusions, or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

AND

B. Resulting in at least two of the following:

   1. Marked restriction on 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 chronic affective 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 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.

The Claimant's medical records document the Claimant's bipolar disorder with alcohol dependence and personality disorder, not otherwise specified. The Claimant's GAF for the period from October 2006 and forward remained consistently around 61. Comparatively, a December 13, 2005 psychiatric evaluation documented the Claimant's GAF as "about 40." The December 11, 2007 noted increased agitation, mood swings and sleeplessness, and the two Mental Residual Function Capacity Assessments indicates the Claimant's ability is markedly limited in 6 of 20, and then 8 of 20, areas however each refer to the December 2005 evaluation. The records also document issues with alcohol and/or substance abuse treatment. In consideration of the Claimant's diagnoses, it is found that the substance/alcohol use is not a contributing factor material to the determination of disability and the Claimant's functional limitations would remain independent of the abuse. 20 CFR 416.935 According to the medical evidence alone, the Claimant's mental impairments do not meet or equal the intent or severity of the listing requirements within 12.00 thus she cannot be found disabled, or not disabled, for purposes of the Medical Assistance program. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a) (4) (iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b) (1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a (a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling,

stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c) (2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Over the past 15 years, the Claimant worked in a deli, as a waitress, at a veterinary hospital, and as a short order cook whose primary responsibilities included preparing food and carrying/lifting 20 to 35 pounds. The Claimant testified that her various positions ended because she resigned due to not working enough shifts; noting making enough money; shifts too long; and for personal reasons. The Claimant further testified that she was discharged after approximately 3 months from her final position (in a deli) due to being irresponsible. There was some evidence presented to establish that the Claimant's impairment, even in light of prescribed treatment, interferes with her ability to function independently, appropriately, effectively, and on a sustained basis. Moreover, in light of the Claimant's current physical restrictions, it is found that the Claimant is unable to return to past relevant work therefore the 5th step in the sequential evaluation is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of this writing, the Claimant was 58 years old thus considered of advanced age for MA-P purposes. The Claimant is also a high school graduate with some college with an employment history of unskilled work. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the

burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984) While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978) Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983) Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the nonexertional limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor. The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work.

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform sedentary work however, after review of the entire record, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 201.04, it is found that the Claimant is disabled at the 5th step for purposes of the MA-P program.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program purusant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, because the Claimant was found disabled for the purposes of the MA-P program, the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the November 9, 2006 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.

3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in accordance department policy in May of 2010.

/s/
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 04/30/09

Date Mailed: 04/30/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the recip date of the rehearing decision.

CMM/jlg

cc: [redacted]