

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.: 2009-11256
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 16, 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 March 16, 2009. The Claimant appeared, along with [REDACTED] and testified. [REDACTED] interpreted the Claimant's testimony. The Claimant was represented by [REDACTED]. Patricia Bailey appeared on behalf of the Department.

At the Claimant's request, the record was extended for further medical evidence to be submitted and to allow the Department to schedule a psychiatric evaluation. The additional evidence was received and entered as Exhibit 6. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") program, retroactive from February 2008?

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 on April 15, 2008 seeking MA-P benefits retroactive to February 2008.
2. On October 3, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment(s) as non-severe. (Exhibit 1, pp. 1, 2)
3. On October 7, 2008, the Department sent an eligibility notice to the Claimant informing the Claimant that her MA-P benefits were denied. (Exhibit 2)
4. On December 16, 2008, the Department received the Claimant’s Hearing Request protesting the determination that the Claimant is not disabled. (Exhibit 3)
5. On February 10, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 4)
6. The Claimant’s alleged physical disabling impairments are due to arthritis, back and abdominal pain, hypertension, breast cyst, hypergammaglobulinemia, and an enlarged pancreas.
7. The Claimant’s alleged disabling mental impairments are due to depression and anxiety.
8. The Claimant’s impairment(s) have lasted, or are expected to last, for a continuous period of 12-months or more.
9. At the time of hearing, the Claimant was 51 years old with a [REDACTED] birth date; was 5’ 7” and weighed approximately 177 pounds.
10. The Claimant completed through the 12th grade in [REDACTED], does not speak English, and has a limited employment history of working in a factory.

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-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 416.929(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); 20 CFR 416.920a

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 outlined above, 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 2001. The Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a) (4) (ii); 20 CFR 416.920a; 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 support of the Claimant's claim of disability, older records from 2002 were submitted which documented treatment for abdominal pain.

On [REDACTED] an ultrasound of the Claimant's right breast was abnormal resulting in surgical consultation recommendation.

On [REDACTED], the Claimant presented to [REDACTED] [REDACTED] After the results from the ultrasound were reviewed, which documented some prominence of the pancreatic duct, a CT scan of the abdomen and pelvis was recommended.

On [REDACTED], The Claimant presented to [REDACTED] for excision of a right chest wall sebaceous cyst however due to anxiety and markedly elevated blood pressure (209/112), which remained elevated despite medication, the Claimant was admitted for observation. An echocardiogram documented thickening of both mitral valve leaflets with mild mitral regurgitation with trace tricuspid regurgitation. The Claimant was discharged the following day with the following assessment: hypertensive urgency elevated liver function tests, chronic abdominal pain, and sebaceous cyst (surgery was cancelled), degenerative joint disease, osteoarthritis, and peptic ulcer disease.

On March 24, 2008, the Claimant's treating physician completed a Medical Examination Report on the Claimant's behalf. The Claimant's current diagnoses were listed as an enlarged pancreas, hypergammaglobulinemia, hypertension, infected cyst, and anxiety disorder. The Claimant was listed in stable condition with no physical limitations.

Laboratory test [REDACTED] [REDACTED] documented an increased amount of the γ -globulins in the plasma (hypergammaglobulinemia).

On [REDACTED] the Claimant attended a follow-up appointment [REDACTED] [REDACTED] A CT scan documented two liver lesions, elevated anti-mitochondrial antibody, and biliary cirrhosis was not ruled out.

On [REDACTED] an endoscopic examination of the Claimant's esophagus, stomach, and duodenum (esophagogastroduodenoscopy) was performed on the Claimant at [REDACTED] [REDACTED] The post-operative diagnoses revealed a small column of gastric mucosa in the distal esophagus and antral gastritis with patulous pylorus.

On [REDACTED] a biopsy of the Claimant's liver was performed at [REDACTED] [REDACTED] Slight lymphoplasmacytic inflammation was documented however the liver did not appear too cirrhotic.

On [REDACTED] the Claimant attended a follow-up appointment at [REDACTED] [REDACTED] A previous CT guided liver biopsy revealed periportal fibrosis stage II with mild portal inflammation. A liver function study recheck was planned as well as a colonoscopy.

Progress Notes from a November 10, 2008 examination by the Claimant's treating physician documented the Claimant's hypertension as uncontrolled despite prescribed treatment, back pain, anxiety, and primary biliary cirrhosis. The Claimant's Wellbutrin and Xanax were refilled to treat her anxiety disorder.

On November 11, 2008, the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The Claimant's current diagnoses were primary biliary cirrhosis, low back pain, hypertension, and anxiety. The Claimant's physical condition

was stable and she was found able to frequently lift/carry up to 10 pounds and able to stand/walk/sit between 1-2 hours of an 8-hour workday. There were no restrictions on the Claimant's ability to perform repetitive actions with her hand/arms and feet/legs.

Pursuant to an interim order issued on March 17, 2009, the Claimant attended a psychiatric evaluation at [REDACTED] on [REDACTED]. The Claimant was diagnosed with dysthymic disorder and somatoform pain disorder. The Global Assessment Function ("GAF") was 47 and her prognosis was guarded. In addition, the Claimant was found unable to manage her benefit funds. The Mental Residual Functional Capacity Assessment completed by the Psychiatrist found the Claimant markedly limited in all 20 areas.

In this case, the medical evidence establishes that the Claimant has physical limitations on her ability to perform basic work activities. Further, the Claimant has presented medical evidence establishing that she does have some psychological limitations on her ability to perform basic work activities. The medical evidence has established that 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 has alleged mental disabling impairments due to anxiety and depression. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

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

Chronic mental disorders may be controlled or attenuated by psychosocial factors that provide highly structured and supportive settings which may greatly reduce the mental demands placed on an individual. 12.00G If an individual's symptomatology is controlled, the ability to function outside of the structured setting is considered. *Id.* In addition, the effects of medication are considered as it relates to an individual's ability to function. Functional limitations that persist despite medication are also considered when determining the severity of the impairment. 12.00G

Listing 12.02 discusses organic mental disorders which relate to psychological or behavioral abnormalities associated with dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional

abilities. The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:
 - 1. Disorientation to time and place; or
 - 2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was know sometime in the past); or
 - 3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
 - 4. Change in personality; or
 - 5. Disturbance in mood; or
 - 6. Emotional liability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
 - 7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., Luria-Nebraska, Halstead-Reitan, etc;

AND

- B. Resulting in at least two of the following:
 - 1. Marked restriction of activities of daily living; or
 - 2. Marked difficulties in maintaining social functioning; or
 - 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 - 4. Repeated episodes of decompensation, each of extended duration;

OR

- C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning. 12.03 The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
 1. Delusions or hallucinations; or
 2. Catatonic or other grossly disorganized behavior; or;
 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt Affect; or
 - b. Flat Affect; or
 - c. Inappropriate affect;

Or

4. Emotional withdrawal and/or isolation;

AND

- B. Resulting in a least two of the following:
 1. Marked restriction of activities of dialing 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 durations

OR

- C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or changed 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.

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 distractability; 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.

In this case, medical evidence shows that the Claimant was diagnosed with anxiety and dysthymic disorder and somatoform pain disorder. The Claimant's mental impairments have lasted continuously for a period of at least 12-months. The record documents emotional

withdrawal with marked restrictions on all 20 factors listed on the Mental Residual Functional Capacity Assessment despite prescribed treatment. The Claimant's GAF is 47 and her prognosis is guarded. Ultimately, based upon the submitted medical documentation, the Claimant's mental impairment(s) are the medical equivalent of a Listed impairment within 12.00. Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

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 April 15, 2008 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 2010.

/s/

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

Date Signed: 04/15/09

Date Mailed: 04/15/09

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 receipt date of the rehearing decision.

CMM/jlg

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