

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 200929642
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 12, 2009
Macomb County DHS (20)

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 Warren, Michigan on Monday, October 12, 2009. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of new medical evidence. The additional evidence was received, reviewed, and entered as Claimant Exhibits A and B. 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 the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits on August 28, 2008.

2. On September 30, 2008, the Medical Review Team (“MRT”) deferred the disability determination requesting additional medical evidence. (Exhibit 1, pp. 58, 59)
3. On February 2, 2009, the Claimant submitted a second MA-P application.
4. On February 7, 2009, the Claimant attended a consultative mental status evaluation. (Exhibit 1, pp. 3 – 8)
5. On February 18, 2009, the MRT found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
6. On February 26, 2009, the Department notified the Claimant of the MRT decision(s). (Exhibit 2)
7. On May 22, 2009, the Department received the Claimant’s written request for hearing. (Exhibit 3)
8. On July 28, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 4)
9. The Claimant’s alleged physical disabling impairments are due to abdominal pain, high blood pressure, diabetes mellitus, and leg neuropathy.
10. The Claimant’s alleged mental disabling impairments are due to bipolar disorder.
11. At the time of hearing, the Claimant was 47 years old with a [REDACTED] birth date; was 5’6” in height; and weighed 178 pounds.
12. The Claimant has a limited education and an employment history as a machine operator.
13. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period of 12 months or longer.

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”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are

found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Manual (“BRM”).

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 416.927

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 (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 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) 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) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

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 is made. 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. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for 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 due to abdominal pain, high blood pressure, diabetes mellitus, leg neuropathy, and bipolar disorder.

On [REDACTED], the Claimant was admitted to the hospital with complaints of abdominal pain. A CT scan revealed a right ovarian cyst. The Claimant underwent an irrigation and debridement of an abscess on her right forearm. The labial abscess spontaneously burst which tested positive for MRSA. The Claimant's severe pain was noted. The Claimant was discharged on [REDACTED] with the diagnoses of intractable pelvic pain with MRSA positive labial abscess, right ovarian cyst, bipolar disorder, and anemia.

On [REDACTED], the Claimant was admitted to the hospital with complaints of intractable nausea, emesis, and right lower quadrant pain. The Claimant was discharged on [REDACTED] with the diagnoses of intractable right lower quadrant pain with nausea and vomiting secondary to adhesions and constipation, bipolar disorder, gastroesophageal reflux disorder, chemical dependence (narcotics), and hypertension.

On [REDACTED], the Claimant was treated in the hospital for skin infection/lesions, hypertension, COPD, and eczema.

On [REDACTED], the Claimant's treating physician completed a letter on behalf of the Claimant stating that she receives treatment for persistent abdominal pain with adhesions, and right ovarian cysts.

On [REDACTED], the Claimant attended a consultative physical examination. The diagnoses were syncopal episodes, recurrent, bradycardia (by history), hypertension with coronary artery disease, chronic abdominal pain status post six abdominal surgeries and removals of adhesions, GERD, chronic left hand pain, and bipolar disorder.

On [REDACTED], the Claimant was admitted to the hospital with complaints of worsening left buttock abscess. The Claimant was treated for left buttock abscess status post failure outpatient therapy, multiple scattered painful pustules in the groin, axillary, and scalp, chronic hepatitis B, pelvic adhesions, and anemia. The Claimant was discharged on [REDACTED].

Progress notes from [REDACTED] through [REDACTED], document the Claimant's prescribed treatment and cognitive behavioral therapy for the Claimant's bipolar disorder.

On [REDACTED], the Claimant was admitted to the hospital with complaints of abdominal pain secondary to abdominal pelvic adhesions. A psychiatric consultation was performed which diagnosed the Claimant with bipolar I disorder, with a history of

prescription drug abuse/dependence and a history of heroin and cocaine abuse/dependence. The Claimant's Global Assessment Functioning ("GAF") was 40 to 50. The Claimant was discharged on December 10th with the diagnoses of tactile abdominal pain secondary to abdominal pelvic lesions and gastroparesis.

On [REDACTED], the Claimant attended a consultative psychological examination. The Claimant was diagnosed with bipolar disorder with a GAF of 50. The Psychologist opined that, at this time, the Claimant was not suitable for work. Further, if the Claimant were to be employed, the amount of stress and pressure would cause additional problems.

On [REDACTED], the Claimant was admitted to the hospital with complaints of intractable nausea and emesis. The Claimant was discharged on [REDACTED] with the diagnoses of intractable nausea, emesis, and abdominal pain secondary to adhesions, gastroparesis, diabetes mellitus, uncontrolled hypertension, probable peptic ulcer, and furunculosis.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses intermittent bouts of abdominal pain secondary to adhesions that require hospitalizations, diabetes, bipolar disorder, and hypertension. The Claimant was found able to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday; and able to perform repetitive actions with her extremities. As a result of the Claimant's chronic pain, the Physician opined that prolonged standing and lifting would exacerbate her condition.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were diabetes mellitus, leg neuropathy, right ovarian cyst with a history of bipolar disorder, abdominal pain, and hypertension. The physical examination revealed mild discomfort, rigid gait, discomfort when squatting, and depressed demeanor. The Claimant was in stable condition and found able to occasionally lift/carry up to 10 pounds; stand and/or walk less than two hours during an 8 hour workday; sit less than 6 hours during this same time frame; and able to perform repetitive actions with her extremities.

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 some 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 disabling impairments due to abdominal pain, high blood pressure, diabetes mellitus, leg neuropathy, and bipolar disorder.

Listing 8.00 discusses skin disorders which may result from hereditary, congenital, or acquired pathological processes. The types of impairments that are covered under this listing are: Ichthyosis, bullous diseases, chronic infections of the skin or mucous membranes, dermatitis, hidradentis, suppurativa, genetic photosensitivity disorders, and burns. 8.00A Extensive skin lesions are those that involve multiple body sites or critical body areas, and result in a very serious limitations. 8.00C1

Listing 8.04 discusses chronic infection of the skin or mucous membranes which result in extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment as prescribed.

In this case, the medical evidence documents several abscesses/adhesions on the Claimant's arms, labia, lower extremities, buttocks, abdomen, and pelvis. Multiple scattered painful pustules in the groin and scalp are also documented as well as MRSA infection. The Claimant has had at least six surgeries to include irrigation and debridement to treat the adhesions. For the period from May 2008 through November 2008, the Claimant was hospitalized on six occasions for (in part) adhesions. In May 2009, the Claimant was hospitalized again for the adhesions. The medical records document the Claimant's severe pain. Ultimately, the Claimant's impairment(s) meet or is the medical equivalent thereof a listed impairment within 8.00, specifically 8.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the August 28, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.

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3. The Department shall supplement for any lost benefits that the Claimant 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 November 2011 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 10/07/2010

Date Mailed: 10/07/2010

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 Circuit Court within 30 days of the mailing 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.

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