

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 2009-14772

Issue No.: 2009/4031

Case No.: ██████████

Load No.: ██████████

Hearing Date:

June 22, 2009

Wayne County DHS (43)

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 telephone hearing was conducted from Detroit, Michigan on June 22, 2009. The Claimant appeared and testified, along with ██████████. ██████████ appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical records. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program?

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 an application for public assistance seeking Medical Assistance ("MA-P") on December 2, 2008.

2. On January 15, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled for purposes of MA-P benefits. (Exhibit 1, pp. 5, 6)
3. On January 16, 2009, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled.
4. On January 28, 2009, the Department received the Claimant’s written Request for Hearing. (Exhibit 1, pp. 2-4)
5. On March 20, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant not disabled finding the impairment(s) lacked duration. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairment(s) are due to chronic back and leg pain, arthritis, blurred vision, diabetes, obesity, and anemia.
7. The Claimant’s alleged mental impairments are due to bipolar disorder.
8. At the time of hearing, the Claimant was 40 years old with a [REDACTED] birth date; was 5’3” in height; and weighed 200 pounds.
9. The Claimant has a limited education with a work history as a home health aide and certified nursing assistant.

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 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) 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)

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 therefore is not ineligible for disability 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 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, the Claimant alleges physical disability based upon chronic back and leg pain, arthritis, blurred vision, diabetes, obesity, and anemia. In support of her claim, an older medical record from [REDACTED] was submitted. The Claimant bipolar disorder diagnosis was documented as well as prescribed treatment (Depakote, Seroquel, Lexapro, and clonazepam). Ultimately, the Claimant was found to have bipolar disorder with evidence of delusions and paranoia, and arthralgia and arthritic pain, mostly in the knees, without evidence of any decrease in range of motion.

On [REDACTED], the Claimant was admitted to the hospital after complaints of vaginal itching, vision disturbance, weakness, and dizziness. The Claimant's blood sugar was 429. The Claimant was discharged on [REDACTED], with the diagnoses of a new onset of diabetes mellitus type 2, microcytic anemia, nicotine dependency, obesity, uncontrolled blood sugar, and urinary tract infection.

On [REDACTED], the Claimant attended a follow-up appointment for her newly diagnosed diabetes mellitus type II. The Claimant's blood sugar was 225 with a hemoglobin at 9.8. The diagnoses were listed as diabetes mellitus type II with uncontrolled blood sugar (despite prescribed treatment), microcytic anemia, obesity, vision disturbance secondary to her diabetes, and nicotine dependency.

On [REDACTED], the Claimant was examined by her treating physician. The diagnoses were listed as diabetes type II (not well controlled), microcytic anemia, dyslipidemia,

nicotine dependency, obesity, vision disturbance, and peripheral neuropathy secondary to her diabetes.

On [REDACTED], the Claimant's treating physician submitted a Medical Examination Report on behalf of the Claimant. The current diagnoses were listed as diabetes mellitus II, iron deficiency anemia, peripheral neuropathy, and dyslipidemia. The physical examination documented numbness in the Claimant's upper and lower extremities (peripheral neuropathy). The Claimant was found to have no physical limitations but was found limited in her ability to concentrate.

On this same date, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were diabetes mellitus type II and anemia. The Claimant was able to meet her personal care activities and she was found able to work her usual occupation as well as other employment within certain unlisted limitations.

On [REDACTED], the Claimant attended a physical examination which found the Claimant's ability to be somewhat limited but noting that she is able to perform housework without interruption. The Claimant walked with a limp due to knee pain finding decreased range of motion to 100 degrees in the flexion position in the right knee with tenderness and moderate decreased range of motion to 75 degrees in the flexion position in the left knee. Tenderness was also documented in the right knee. The Claimant was unable to stoop and/or squat nor was she able to walk on her heels and toes. The Claimant was diagnosed with adult onset diabetes mellitus with peripheral neuropathy and joint pain mostly due to degenerative joint disease.

On [REDACTED], the Claimant attended a mental status examination. The Claimant was diagnosed with bipolar disorder with the most recent episode mixed with psychotic features, personality disorder (not otherwise specified) with anti-social traits. The Global Assessment

Functioning (“GAF”) was 40. The Psychologist opined that the Claimant was able to understand, retain, and follow simple instructions and perform basic routine tasks. Her ability to interact with coworkers, supervisors, and the public was mildly impaired. The Claimant was found unable to manage her financial matters.

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 medical evidence establishing that she does have some physical and mental 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, or are expected to last, 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 physical and mental disabling impairments due to chronic back and leg pain, arthritis, blurred vision, diabetes, obesity, anemia, and bipolar disorder.

On August 24, 1999, the Social Security Administration deleted Listing 9.09 regarding obesity from the Listing of Impairments. SSR 02-1p In conjunction, the final rule in the Federal Register deleting 9.09, added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings that provide guidance regarding the potential effects obesity has in causing or contributing to impairments in those body systems. *Id.* Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal system,

and disturbance of this system can be a major cause of disability in individuals with obesity.

1.00Q The combined effects of obesity with musculoskeletal impairments may be greater than the effects of each of the impairments considered separately. *Id.* Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments (and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity) any additional and cumulative effects of obesity is considered. *Id.* The National Institute of Health (NIH) established medical criteria for the diagnosis of obesity in its *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults* (NIH Publication No. 98-4083, September 1998). SSR 02-1p These guidelines classify overweight and obesity in adults according to Body Mass Index (“BMI”) which is the ratio of an individual’s weight in kilograms to the square of his/her height in meters. *Id.* For adults, the *Clinical Guidelines* describe a BMI of 25-29.9 as “overweight” with obesity being 30.0 or above. *Id.* The guidelines recognize three levels of obesity. Level I includes BMIs of 30.0-34.9; Level 2 includes BMIs of 35.0-39.9; and Level 3 (termed “extreme” obesity) includes BMIs of 40.0 or above. *Id.*

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.* Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. *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 as defined in 1.00B2c

In order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. The objective findings establish that the Claimant has degenerative joint disease, peripheral neuropathy and pain and decreased range of motion in both knees. The Claimant was unable to walk on her heels and toes but did not require a cane for ambulation. The Claimant's BMI is over 36 which undoubtedly impact the Claimant's knee pain. That being stated, there was no appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joints. Ultimately, the record does not support a finding of a listed impairment within 1.00 thus the Claimant cannot be found disabled, or not disabled under this listing.

The Claimant is anemic. Listing 7.00 discusses hematological disorders. In consideration of the objective medical findings the record does not support a finding of a listed impairment within 7.00, specifically 7.02 thus the Claimant cannot be found disabled under this listing.

The Claimant also asserts physical disabling impairments due to diabetes mellitus. Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

- A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
- C. *Retinitis proliferans*; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations establish a neurological impairment. 11.00C The degree of interference with locomotion and/or interference with the use of fingers, hands, and arms are considered. *Id.* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. 2.00A1 A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or to perceive visual stimuli in the peripheral extent of vision. *Id.* The loss of visual acuity is met when vision in the better eye after best correction is 20/200 or less. 2.02 Similarly, the loss of visual efficiency is established when the better eye of 20% or less after best correction.

The objective findings establish that the Claimant suffers from diabetes mellitus with peripheral neuropathy. The medical records do not establish persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances. Further, although the Claimant's has blurred vision, the record does not establish that the loss of visual acuity meets, or is the medical equivalent, of Listing 2.00. In

light of the foregoing, the record does not support a finding that the intent and severity requirement of a listed impairment within 9.00, namely 9.08.

The Claimant asserts mental disabling impairments due to bipolar disorder. 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 The severity requirement is measured according to the functional limitations imposed by the medically determinable mental impairment. 12.00C Functional limitations are assessed in consideration of an individual's activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *Id.*

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning and are defined in

Listing 12.03 The required level of severity for these disorders is 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.

Listing 12.06 discusses anxiety-related disorders where anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms. The required level of severity for these disorders are met when the requirements of both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home.

In this case, the medical records establish that the Claimant suffers from bipolar disorder with the most recent evaluation with psychotic features, personality disorder, and anti-social traits. Earlier records (2007) also document delusions and paranoia. The Claimant's recent GAF was 40 which reflects some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood. Despite the low GAF score, the Psychiatrist opined that the Claimant was able to perform basic routine tasks and her ability to interact with others was only mildly impaired. Ultimately, the Claimant may meet a listed impairment within 12.00 as detailed above, however the record does not meet the intent and severity requirement thus the Claimant cannot be found disabled, or not disabled, under this listing. Accordingly, the Claimant's eligibility is considered under Step 4. 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.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR

416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

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.*

The Claimant's prior work history includes work history as a home health aide and certified nursing assistant. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, medium work.

The Claimant's treating psychiatrist indicated that the Claimant was able to perform past relevant work and other work. Ultimately, if the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe

impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, current limitations, and in reliance of the Claimant's treating physician opinion, it is found that the Claimant maintains the mental and physical capacity to perform past relevant work. Accordingly, the Claimant is found not disabled at Step 4 with no further analysis required.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant 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 impairment 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, the Claimant is found not disabled for purposes of the Medical Assistance ("MA-P") program, therefore the Claimant's is found not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamelka

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

Date Signed: 12/17/09

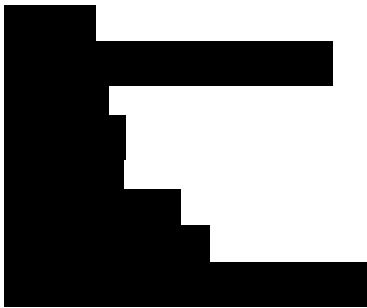
Date Mailed: 12/17/09

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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