

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.: 2009-35345
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 4, 2010
Macomb County DHS (12)

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 conducted from Clinton Township, Michigan, on January 4, 2010. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED], [REDACTED]. [REDACTED] appeared on behalf of the Department.

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 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 on May 8, 2009.

2. On July 2, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 66, 67)
3. The Department sent an eligibility notice to the Claimant on July 9, 2009 informing her that MA-P benefits were denied. (Exhibit 2)
4. On July 14, 2009, the Department received the Claimant’s timely Request for Hearing protesting the denial of benefits. (Exhibit 3)
5. On September 18, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 5)
6. The Claimant’s alleged physical disabling impairments are due to peripheral neuropathy, plantar fasciitis, and breast cancer.
7. The Claimant asserts mental disabling impairments due to anxiety with panic attacks and depression.
8. At the time of hearing, the Claimant was 50 years old with an [REDACTED], birth date; was 5’ 9” in height; and weighed approximately 155 pounds.
9. The Claimant graduated from high school with some college and an an employment history of work in home health care, as an IV coordinator/technician, and as a pharmacy technician.
10. 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 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, are 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 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 to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step 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 are 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 must be 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 and, thus, 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 on the basis of peripheral neuropathy, plantar fasciitis, and breast cancer. The Claimant asserts mental disabling impairments due to depression and anxiety with panic attacks. In support of her claim, medical records from early [REDACTED] through [REDACTED] were submitted that reveal diagnosis and treatment of the Claimant's breast cancer and subsequent reconstruction surgery. Treatment for right heel pain and depression were also documented.

On [REDACTED], the Claimant's physician disabled her from work from [REDACTED]. On [REDACTED], the Claimant attended a follow-up appointment regarding her right breast cancer. The examination was unremarkable noting a well healed mastectomy scar.

On [REDACTED], the Claimant presented to the emergency room with complaints of rash on the left buttock. The Claimant was treated and discharged with the diagnosis of left buttock cellulitis.

On [REDACTED], the Claimant sought treatment for foot pain, numbness, and tingling in the lower extremities. The Claimant was diagnosed with neuropathy, plantar fasciitis, irritable bowel syndrome, anxiety, depression, and sleep disturbance.

On [REDACTED], the Claimant presented to the hospital with a rash on her right breast. The Claimant was treated and discharged with the diagnoses of cellulitis and depression.

On [REDACTED], and [REDACTED], the Claimant sought treatment for upper extremity pain, numbness, tingling, lower extremity pain, numbness, and tingling. The Claimant was diagnosed with neuropathy, plantar fasciitis, irritable bowel syndrome, anxiety, depression, and sleep disturbance.

On [REDACTED], the Claimant was treated for fatigue and chronic pain.

On [REDACTED], the Claimant sought treatment for low back pain, numbness, and foot tingling. The Claimant was diagnosed with right foot pain, status post injection, fasciotomy, neuropathy, irritable bowel syndrome, anxiety, depression, and sleep disturbance.

On [REDACTED], the Claimant sought treatment for back pain, fatigue, and foot pain. The Claimant was found to be post menopausal; have neuropathy; and foot pain.

On [REDACTED], the Claimant sought medical treatment after falling on the ice. The Claimant was found with bruising of the ribs, possible rib fracture and wrist bruise.

On [REDACTED], an ultrasound of the retroperitoneal area did not reveal any definite abnormality.

On [REDACTED], the Claimant was treated for multiple rib fractures. The Claimant attended follow-up appointments on [REDACTED] and [REDACTED].

On [REDACTED], the Claimant presented to the emergency room with complaints of nausea, vomiting, sore throat, fever, chills, and abdominal pain. A whole body scan was negative for evidence of osseous metastases. The Claimant was discharged on [REDACTED], with the diagnosis of acute hepatitis secondary to medications plus/minus component of viral hepatitis. Additional diagnoses were hypokalemia, pancytopenia, tobacco abuse, depression, old rib fracture, and a history of breast cancer and peripheral polyneuropathy.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant based on an examination from [REDACTED]. At that time, the Claimant was diagnosed with tarsal tunnel syndrome. No physical and/or mental restrictions were noted.

On [REDACTED], the Claimant presented to the hospital with complaints of nausea, vomiting, and diarrhea. The Claimant was discharged on [REDACTED] with the diagnoses of intractable nausea, vomiting, and diarrhea, migraine cephalgia, left rib pain secondary to fractures, and mood disorder. The Claimant's breast cancer history was also noted.

On [REDACTED], the Claimant was admitted to the hospital with depression and suicidal ideation. The Claimant was diagnosed with major depressive disorder, severe, with an admitting GAF of 15.

The Claimant's treating physician submitted a Medical Examination Report on behalf of the Claimant. The current diagnoses were foot pain, plantar fasciitis, post fracture, post mastectomy and chemotherapy, and left rib fracture. The Claimant's condition was stable and she was found able to lift/carry 10 pounds; stand and/or walk less than 2 hours in an 8-hour day; sit less than 6 hours during this same time frame; and able to perform repetitive action with her upper extremities. Operating foot/leg controls was limited to her left leg/foot. An assistive device (cane, Ritchie brace) was medically necessary for ambulation.

On [REDACTED] a psychological assessment was performed on the Claimant. The diagnosis was major depressive disorder, recurrent, severe without psychosis. The GAF was 48.

On [REDACTED], a psychiatric evaluation was performed on the Claimant. The Claimant was diagnosed with major depression, recurrent, moderate, with a GAF of 40 and a guarded prognosis. The Claimant was prescribed Xanax for her severe anxiety and severe panic attacks.

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 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 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 disabling impairments due to peripheral neuropathy, plantar fasciitis, breast cancer (remission), depression, and anxiety with panic attacks.

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, 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.

Listing 12.06 defines anxiety-related disorders whether anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms. The required level of severity for this disorder is met when the requirements in 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 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 Resulting in complete inability to function independently outside the area of one's home.

In this case, medical evidence documents that the Claimant has depression, anxiety, and suffers from panic attacks. Treatment for the mental impairment(s) is documented from as early

as [REDACTED]. The Claimant's GAF ranged from 15 through 48 despite prescribed treatment. These scores demonstrate some danger of hurting self or others or occasional failure to maintain minimum personal hygiene or gross impairment in communication; some impairment in reality testing or communication or major impairment in several areas such as work/school, family relations, judgment, thinking or mood; and serious symptoms or serious impairment in social, occupational, or school functioning. The records also document appetite and sleep disturbance, change in weight, decreased energy, difficulty concentrating/thinking, with a recent hospitalization due in part to suicide ideation with a plan. In review of the objective findings, it is found that the Claimant's mental impairment(s) meets, or is the medical equivalent thereof, a listed impairment within 12.00, specifically 12.04. 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 facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance benefit program.

Accordingly, it is Ordered:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the May 8, 2009, 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 for any lost benefits 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 March 2011 in accordance with department policy.

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

Date Signed: February 1, 2010

Date Mailed: February 1, 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 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/pf

cc:

