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.: 201016334
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
March 8, 2010
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by in person hearing on March 8, 2010 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on August 26, 2009. Claimant was present and testified. Claimant was represented by [redacted] of [redacted]. [redacted] FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

FINDINGS OF FACT

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

1. Claimant filed for MA-P and SDA on October 30, 2008. Claimant requested MA and SDA retroactive to August, 2008.

2. Claimant is 5'7 1/2" tall and weighs 198 pounds.

3. Claimant is right handed.

4. Claimant is 48 years of age.

5. Claimant's impairments have been medically diagnosed as, coronary artery disease, bipolar disorder, Diabetes, Post Traumatic Stress Disorder, Psychosis, situation anxiety, migraines, anxiety, hiatal hernia, and plantar fasciitis.

6. Claimant's physical symptoms are seasonal coughing; bronchial asthma; shortness of breath; upset stomach; dizziness; shaking; pain (mostly when wet or cold) in legs, arms, shoulders; chest pain on both sides; difficulty breathing; headaches (3/7 days/week); severe heart burn and vomit in throat; pain in rib area, pain in the bottom of feet into hips (daily); leaky bladder (wears pads constantly, and may have to change clothes as well); right hand used to shake so badly she could not write, but now controlled with medication and legs give out on her (3 times total).

7. Claimant's mental symptoms are poor short term memory (dates, what she went into room for), poor concentration, anxiety attacks (monthly - shaking, gets agitated nervous, anxious, feels overwhelmed), fear, nervousness, poor appetite, sleep disturbances (5 hrs interrupted, 2x waking up, on meds to fall asleep has been awake 6 days at a time), fatigue – tired a lot, rarely naps, guilt feelings, and low self esteem.

8. Claimant takes the following prescriptions:
   a) Metformin & Glipiside for diabetes
   b) Plabix & Aspirin for heart
   c) Lopressor for HBP
   d) Prilosec for Heart burn/ulcer
   e) Lipitor – Cholesterol
   f) Xanax – anxiety
   g) Thorazine – mood stabilizer
   h) Deserol – sleep medication

9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

10. Claimant has a High School grade education and 1 year of college.

11. Claimant is able to read, write and perform basic math.

12. Claimant last worked 8 years ago, doing in home care working with hospice, working as an aide. Claimant's job duties were to give shots and medication. The job duties required standing, lifting and bathing patients. Claimant performed this job for 6 years and left after her last patient died. Claimant then cared for her dad when he was dying.

13. Claimant has prior employment experience with limousine service as a driver/manager. Claimant also worked at [redacted] 17 years ago as an executive administrative assistant.

14. Claimant testified to the following physical limitations:
    - Sit: before pain for ½ hour, about 1 hr total. Severe pain in legs and then has to stand.
    - Stand: 15-20 minutes (feels like she's going to pass out)
    - Walk: 1 block (then cannot breath)
    - Bend: Claimant cannot bend. Has trouble with lower back pain getting back up. Claimant cannot get back up.
    - Lift: Claimant can carry two grocery bags.

15. Claimant performs household chores such as cooking which she shares with her husband. Claimant has tried vacuuming but can only get ½ done. Claimant can clean tub after bath or toilet. Claimant's husband does the dishes, laundry, outside work, takes trash out, and goes grocery shopping.

16. Claimant testifies that she uses a bar on the tub because she cannot stand for a shower.

17. Claimant testified that she will have 10 good and 20 bad days during the month.

18. The Department found that Claimant was not disabled and denied Claimant's application on May 27, 2009.

19. Medical records examined, in part, are as follows:

<u>3/9/10 Mental Residual Functional Capacity Assessment (Exhibit A, pp. 1-2)</u>
MENTAL RESIDUAL FUNCATION CAPACITY ASSESSMENT: Markedly limited as follows:

1. The ability to remember locations and work like procedures.
2. The ability to understand and remember on or two step instructions.
3. The ability to understand and remember detailed instructions.
4. The ability to carry out simple, one of two step instructions.
5. The ability to carry out detailed instructions.
6. The ability to maintain attention and concentration for extended periods.
7. The ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances.
8. The ability to sustain an ordinary routine without supervision.
9. The ability to work in coordination with or proximity to others without being distracted by them.
10. The ability to make simple work related decisions.
11. The ability to work in coordination with or proximity to others without being distracted by them.

12. The ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent basis without an unreasonable number and length of rest periods.
13. The ability to accept instructions and respond appropriately to criticism from supervision
14. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.
15. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.
16. The ability to respond appropriately to change in the work setting.
17. The ability to be aware of normal hazards and take appropriate precautions.
18. The ability to travel in unfamiliar places or us public transportation.
19. The ability to set realistic goals or make plans independently of others.

<u>8/20/09 Psychiatric Evaluation (Exhibit 1, p. 5)</u>
HX: Pt has a history of bipolar disorder. The pt reports that her current psychiatric meds have been helping her with anxiety and depression. The pt reports that she is having problems with anxiety and nervous recently and having a hard time sleeping.
DX: Bipolar affective disorder, mixed, severe without mention of psychotic behavior.
Current GAF: 40

<u>5/3/07 Psychological intake (Exhibit 1, p. 10)</u>
Pt has no insurance and has run out of most of her psychiatric medications. She is overwhelmed with life stressors and feels she is on the verge of a nervous breakdown.
HX: Pt reports migraines, IBS, hiatel hernia, sleep disorder, subclinical hypothyroidism, prolapsed uterus, planter's fasciitis, and skeletal arthritis. She needs a bladder suspicion surgery and testing to see if she has Lupus or cancer of the thyroid. She has a history of seizures. She has a blood clotting disorder. Mobility problems due to severe pain in feet/legs. She needs a full set of dentures, she has not teeth.
TX: Pt felt her mental illness started twenty years ago when she had a nervous breakdown, was hospitalized and started taking medications. Since then she has a hospitalization at Crittenden 6 & 3 years ago, a hospitalization at Havenwyck one year ago with a partial program at same facility immediately afterwards.
DX: Bipolar affective disorder, mixed, moderate. Current GAF 41

<u>Psychological Treatment Progress Notes (Exhibit 1, p. 29+)</u>
Dates of treatment 9/14/09, 8/31/09, 8/17/09, 8/10/09, 3/23/09, 3/13/09, 3/9/09, 3/4/09, 3/2/09, 2/26/09, 2/23/09, 2/17/09, 2/12/09, 2/5/09
Pt repeatedly denied having a mental illness

<u>6/19/09 Independent Medical Exam (Exhibit 2)</u>
Pt has a history of adult onset diabetes mellitus. She does not check her blood sugar at home. Pt was diagnosed with enlarged heart a yr ago by echocardiogram. Pt complained of shortness of breath. Pt has a history of plantar fasciitis.
PHYSICAL EXAM: Bilateral tenderness in the bottom of the feet.

CONCLUSION: The pt appeared that she is suffering from a medical problem. She had chest pain that is atypical in origin. Her main problem is pain involving both feet and shortness of breath with exertion. The patient's activity is somewhat limited to light housework with a lot of interruption.

4/13/09 Psychiatric IME (Exhibit 1, p. 10)
ATTITUDE/BEHAVIOR: Patient sustained contact with reality, marginal self-esteem and somewhat increased motor activity. Pt appeared excitable . . . she was laughing intermittently and appeared somewhat disproportionate with topic of conversation.
EMOTIONAL REACTION: Patient appeared in somewhat euphoric excitement mood and presented frequent laughter which mostly was appropriate. There was no sign of suspiciousness or paranoia. Patient's affect was somewhat incongruent with her mood.
DX: Post traumatic stress disorder, chronic; Mood disorder, bipolar; dependant personality trait.
GAF: 45
PROGNOSIS: Fair to guarded

9/2/08 Hospital Admission (Exhibit 1, p. 36)
Cl mental health clinic contacted police b/c Cl was acting inappropriately and in a psychotic manner. Brought to hospital in restraints. Hospitalization recommended to prevent further deterioration and possible self-harm.
MENTAL STATUS EXAM: Pt was very inappropriate and psychotic when she was admitted. Required injections of Haldol and Ativan
DX: Psychotic disorder, probably secondary to general medical condition unstable diabetes mellitus. GAF 20-25 – admission; GAF 55-60 discharge.

10/26/08 Hospital Admission (Exhibit 1, p. 79)
Complete left heart catheterization, coronary angiography
CONCLUSION: Mild to moderate 3 vessel coronary artery disease with 40-50% blockages in the LAD and circumflex and 30-40% mid RCA disease

12/16/08 Hospital Admission (Exhibit 1, p. 112)
Pt brought in by police with disorganized and bizarre thoughts – blood sugar fluctuating. At least 4 previous hospital admissions for manic episodes in the past.
DX: Bipolar disorder, mixed cerebrovascular schizoaffective disorder; GAF 15

3/18/08 Internal Medicine Exam Report (Exhibit 1, p. 129)
HX: Bilateral plantar fasciitis – unable to walk or stand more than 1 hour.
PHYSICAL LIMITATIONS: Stand/walk less than 2 hours in 8 hour work day.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et seq*., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

> . . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). "Gainful work

activity" is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant has not worked for the past eight (8) years. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a "severe impairment" 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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.

20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as "non-severe" only if it "would not affect the claimant's ability to work," "regardless of the claimant's age, education, or prior work experience." *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant's ability to work can be considered non-severe. *Higgs v Bowen,* 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of ongoing bipolar affective disorder, moderate to severe, a prolapsed uterus, Plantar Fasciitis, Migraines and Post Traumatic Stress Disorder. Claimant has been placed on physical restrictions regarding walking and standing due to pain in her feet by her physician. Claimant also has mental limitations as she has been found to be markedly limited in a wide array of mental functioning categories. Therefore, the medical evidence has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record supports a finding that the Claimant's mental impairments are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a)(4)(iii). In this matter, the medical records establish a diagnosis of bipolar disorder. 20 CFR 404, Subpart P, Appendix 1, Rule 12.00, *Mental Disorders.*

After reviewing the criteria of listing 12.04 *Affective Disorders*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meet or are medically equivalent to the listing requirements. 20 CFR 404 §12.04 describes the mental listing as follows:

> *Affective Disorders:* Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.
>
> The required level of severity for these disorders is met when the requirements in 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

C. Medically documented history of a 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 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 supporting living arrangement, with an indication of continued need for such an arrangement.

In the present case, Claimant was medically diagnosed most recently with bipolar affective disorder, mixed and severe. Claimant also has had several hospital admissions for psychotic behavior. At the psychiatric IME, Claimant was excitable, had incongruent mood/affect and appeared disproportionate with the topic of conversation. The psychiatric notes are also replete with Claimant complaining about her inability to sleep. At the time of the hearing, Claimant testified to poor memory and concentration, poor appetite, disturbed sleep, guilt feelings and anxiety attacks. Accordingly, the Administrative Law Judge finds that Claimant meets the requirements in both 12.04(A) and 12.04(B).

Furthermore, Claimant was found to be markedly limited in the performance of all but the simplest tasks and in her ability to understand, remember and carry out instructions. Claimant is also markedly limited in her ability to complete a normal workday without interruptions for psychologically based symptoms. In addition, Claimant was assigned a GAF of 40 during a stable period by her treating psychiatrist. This GAF score is defined as "some

impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." Accordingly, the undersigned finds that Claimant meets the listing of 12.04 due to her bipolar disorder.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

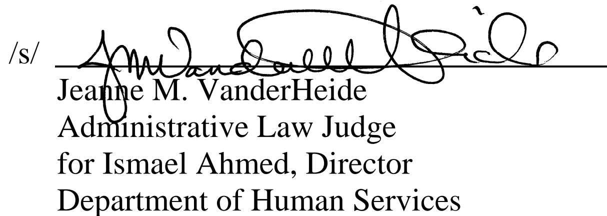
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of October 30, 2008 including retroactive benefits applied for.

Therefore the department is ordered to initiate a review of the application of October 30, 2008, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in May, 2011.

/s/ 
Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 3, 2010

Date Mailed: May 3, 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 cannon be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court 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.

JV/hw