

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.: 2010-16777

Issue No.: 2009, 4031

Case No.: ██████████

Load No.: ██████████

Hearing Date:

March 8, 2010

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

**HEARING DECISION**

This matter was conducted by 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 December 15, 2009. At the hearing, the Claimant was present and testified. ██████████ from ██████████ ██████████ was present and represented Claimant. ██████████ ES 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 applied and was approved for SDA benefits in 2007.

2. Claimant also applied for SDA and MA on June 26, 2008. Claimant requested MA and SDA retroactive to March, 2008.
3. The Department testified that the application dates were incorrectly typed into the DHS 49A (as 6/09) that was forwarded to MRT on the 6/26/08 application.
4. MRT approved Claimant for MA and SDA effective June, 2009 including retroactive benefits through March, 2009.
5. The Department returned the application to MRT with the correct application date and MRT determined that Claimant was not disabled from 6/26/08 – 2/09.
6. Claimant is 5'6" tall and weighs 170 pounds.
7. Claimant is right handed.
8. Claimant is 54 years of age.
9. Claimant's impairments have been medically diagnosed as severe bipolar disorder, depression, diabetes, and osteoarthritis in left knee.
10. Claimant's physical symptoms are left knee and low back pain, difficulty walking and knee swelling.
11. Claimant's mental symptoms are memory problems, difficulty concentrating, panic attacks (cannot leave house, gets really scared, 3x/week) crying spells (1x/week), confusion, fear, nervousness, sleep disturbances, guilt feelings and low self esteem.
12. Claimant is treating once a month with a Psychiatrist.
13. Claimant takes the following prescriptions:
  1. [REDACTED]
  2. [REDACTED]
  3. [REDACTED]
  4. [REDACTED]
  5. [REDACTED]
  6. [REDACTED]
  7. [REDACTED]
  8. [REDACTED]
  9. [REDACTED]
14. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
15. Claimant completed her high school education.

16. Claimant testified that she is able to read, write, and perform basic math skills.
17. Claimant last worked four years ago, as a cashier at [REDACTED]. The job required that Claimant stand on her feet all day, but did not require any lifting. Claimant worked there for two months.
18. Claimant has prior and sporadic employment experience as cashier. Her last steady job ended in 1997. Claimant also worked for a grocery store in the meat department for two years.
19. Claimant testified to the following physical limitations:
  - Sit: 20 minutes and then has to move b/c gets stiff (whole body, especially knee and back)
  - Stand: 15 minutes, and then knee starts aching.
  - Walk: a block wd be pushing it
  - Bend/stoop: can't stoop b/c of knee. Bending from waist ok.
  - Lift: difficult 10 lbs ok.
20. Claimant performs household chores such as cooking, cleaning, laundry and grocery shopping.
21. Claimant testified that she uses a cane when out walking, but not in the house. Claimant testified that it is very difficult for her to do stairs but that she is able to carry a laundry basket up the stairs.
22. Medical records examined are as follows:

7/14/09 Hospital Admission (Exhibit 1, pp. 118-133)

The patient is a 53 year old female admitted to the hospital on 7/13/09 via the ER where she had been brought following a suicide attempt by overdose of medication while drinking alcohol. The patient does have a long psychiatric history, which includes 2 suicidal gestures, 1 in 1999 when she cut her wrist and was hospitalized and another in 2003 when she drank rubbing alcohol and wound up in a treatment center for 3 months. MENTAL STATUS EXAM: The general mood of the patient is one of depression. Her affect is full in intensity, somewhat constricted in terms of lability. DX: Major depression, recurrent, superimposed on dysthymic disorder; personality disorder, NOS with dependent features. GAF: 60

6/1/09 Psychologist Exam (Exhibit 1, p. 9-15)

COMPLAINTS: Depressed, anxious, mood swings, crying, no energy and poor concentration

HX: Treating weekly at [REDACTED]. Admitted at [REDACTED] in 1999 after she attempted suicide.

IMPRESSIONS: Pt is functioning well on a daily basis. She cooks, cleans, socializes and she engages in activities she enjoys such as a planting a garden, knitting, making

afghans, watching television and reading. She is a recovered alcoholic who may have had some issues in terms of her childhood but she is doing well. She does not display behaviors or symptoms of someone who is Bipolar. In fact, she does not have mood swings and in fact she is rational and positive. She does not meet the criteria of a person with mental illness. It could be that the medications she takes are effective at helping to regulate her mood but her daily functioning is consistent. Her cognitive functions are intact.

6/15/09 Internal Medicine Exam (Exhibit 1, pp. 17-24)

COMPLAINTS: Arthritis of both knees, worse on the left for a couple of years.

MUSCULOSKELETAL: The examination of the cervical, dorsal and lumbar spines did not reveal any striking abnormalities. There was no paraspinal muscle tenderness or spasm.

DX: Osteoarthritis of the left knee, asthma, bipolar disorder, type 2 diabetes mellitus, dyslipidemia.

CONCLUSION: She does have acute inflammation of the left knee joint and is therefore limited on standing and walking and she cannot climb.

2/18/08 Annual Psychiatric Evaluation (Exhibit 1, p. 134-135)

DX: Bipolar I disorder, severe with psychotic features, recent episode depressed.

Current GAF: 55

4/23/07 Psychiatric Assessment (Exhibit 1, pp. 25, 26).

Bipolar I disorder, severe with psychotic features

Alcohol dependence, by history, in full remission

11/7/07 Mental Residual Functional Capacity Assessment (Exhibit 1, p. 83-84)

Markedly limited as follows:

1. The ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes
2. The ability to respond appropriately to change in the work setting.
3. The ability to set realistic goals or make plans independently.

2/19/07 Psychiatric Examination (Exhibit 1, p. 41-42)

Bipolar I Disorder, most recent episode – manic with psychotic features.

Mental Residual FCA – moderately limited in several categories. Markedly limited as follows:

1. The ability to work in coordination with or proximity to others without being distracted by them.
2. The ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

3/28/07 Medical Exam Report (Exhibit 1, pp. 68-69)

Chronic Low back & wrist pain made worse by prolonged standing & lifting. Bipolar disorder & depression.

PHYSICAL LIMITATIONS: Lifting less than 10 lbs. occasionally, no prolonged standing.

6/16/06 Medical Exam Report (Exhibit 1, p. 50-51)

HX: Chronic low back and wrist pain made worse by prolonged standing & lifting.

6/2/06 Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 55-56)

Markedly limited in:

1. The ability to understand and remember detailed instructions.
2. The ability to carry out detailed instructions.
3. The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.
4. The ability to work in coordination with or proximity to others without being distracted by them.
5. The ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.
6. The ability to accept instructions and respond appropriately to criticism from supervisors.

CI has a hard time maintaining employment due to symptoms of anxiety and depression.

2/3/06 Initial Psychiatric Assessment (Exhibit 1, pp. 57-58)

CI stated that she had a major relapse 12 days ago and that she had been bouncing off the walls since then. She cannot sit still.

#### 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 last worked in 2006. 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 F.2d 685 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence from medical providers showing diagnoses of bipolar disorder, depression, osteoarthritis of the left knee and diabetes. Claimant’s physicians have placed limitations on her ability to stand, walk and climb. Mental

limitations placed on Claimant by her physicians reveal that Claimant is markedly limited in her mental residual functional capacity. Therefore, the medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant's impairments under step three.

### **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 20 CFR Part 40, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925 and 416.926). Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listings 12.04 *Affective Disorders* were reviewed. In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

### **4. Ability to Perform Past Relevant Work**

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that

affect what you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Claimant testified to physical limitations which are supported by the independent internal medicine examination. Claimant has limitations on standing and walking and would, therefore, be limited to sedentary work. Claimant's prior employment, based on her testimony of her job duties would have been considered unskilled and light in exertional level as it required standing a significant portion of the day. Based on this information the undersigned finds the Claimant unable to return to past relevant work in any of her prior occupations.

Furthermore, Claimant has mental limitations. Claimant was admitted to the hospital in July of 2009 following a suicide attempt. In June of 2009, an independent psychiatrist found Claimant not to have any mental symptoms. However, a trier of fact is required to give controlling weight to a medical evaluation by the Claimant's treating physician. Hensley v. Comm., 573 F.3d 263 (6<sup>th</sup> Cir. 2009). Claimant's treating physician in February of 2008 found Claimant to be suffering from Bipolar I disorder, severe with psychotic features. In fact, Claimant has a long history of Bipolar disorder with several hospital admissions for suicide attempts. Moreover, Claimant testified credibly that her condition had not changed from 2008 to 2009. Evaluation under step five will be made according to the law.

#### **5. Ability to Perform Other Work**

In the fifth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing other work. 20 CFR 416.920(f). This determination is based on the claimant's:

- (1) "Residual function capacity," defined simply as "what you can still do despite your limitations," 20 CFR 416.945.

- (2) Age, education and work experience, and
- (3) The kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 829 (1987).

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is at the limit of sedentary exertional range as light work requires prolonged periods of time spent walking or standing. 20 CFR 416.967.

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR

416.967(a) describes sedentary work:

*Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Claimant at fifty-four years is considered an *individual approaching advanced age*; a category of individuals in age group (50-54) who may be significantly limited in vocational adaptability if restricted to sedentary work. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(g). Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render her capable of doing only sedentary work. Given Claimant's age, education, and prior work experience of unskilled work, Claimant is disabled by law for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Table 1, Rule 201.09. This determination is further supported by Claimant's mental limitations.

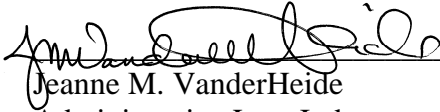
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). 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 her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

#### 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 6/26/08, inclusive of retroactive benefits to March, 2008.

Therefore the department is ordered to initiate a review of the application of June 26, 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 April, 2011.

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

Date Signed: April 6, 2010

Date Mailed: April 6, 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 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

cc:

