

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201126700  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: July 6, 2011  
Eaton County DHS

**ADMINISTRATIVE LAW JUDGE:** Suzanne L. Morris

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on July 6, 2011. The claimant personally appeared and provided testimony, along with her mother, [REDACTED]. The claimant was represented by [REDACTED].

**ISSUE**

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retro MA?

**FINDINGS OF FACT**

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

1. On June 28, 2010, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.
2. On September 23, 2010, the Medical Review Team (MRT) denied claimant's application stating that claimant retained the capacity to perform other work because she had a non-exertional impairment.
3. On September 27, 2010, the department caseworker sent claimant/representative notice that her application was denied.
4. On December 22, 2010, claimant/representative filed a request for a hearing to contest the department's negative action.
5. On April 14, 2011, the State Hearing Review Team denied claimant's application stating that the claimant retained the capacity to perform a wide range of simple, unskilled work.

6. An in-person hearing was held on July 6, 2011. The record was left open to allow the submission of additional medical evidence, as requested by the claimant's representative.
7. No additional medical documentation was received.
8. The claimant alleges disabling impairments due to acute depression, severe anxiety and panic, asthma, shortness of breath, pneumonia, anemia, being underweight, possible anorexia/bulimia, severe agoraphobia and facial dermatitis.
9. At the time of the hearing, the claimant was 30 years old with a birth date of November 10, 1980; was 5' 2" in height; and weighed 100 pounds.
10. The claimant has a high school education with an employment history working as a cashier at Lowe's.

### **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 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in

question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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 (e.g. 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 there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 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 404.1572(a) and 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 404.1572(b) and 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 he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). 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 limitations are 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. 20 CFR 416.920(a)(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 and individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

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). 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 determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment

or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

**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. 20 CFR 416.967(a).

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, the claimant's symptoms are evaluated to see there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

In the present case, the claimant alleges disability due to acute depression, severe anxiety and panic, asthma, shortness of breath, pneumonia, anemia, being underweight, possible anorexia/bulimia, severe agoraphobia and facial dermatitis.

The claimant was admitted to the hospital on April 28, 2010 complaining of difficulty breathing, cough and fever. A chest X-ray showed bilateral bronchitis and left lower lobe pneumonia. The claimant was discharged on April 29, 2010 in stable condition. The claimant followed-up with her primary care physician, who provided her with samples of Avelox and Symbicort and Xopenex. Claimant also complained of eczema and was given a topical cream.

On July 27, 2010, the claimant participated in an Independent Medical Examination (IME). The claimant reported a history of anxiety, but had never seen a psychiatrist. Claimant also reported that she had a 16-year history of smoking, but had quit in April. Claimant indicated that she had a mild amount of exercise-induced asthma as a younger person. The examiner found the claimant to initially be somewhat anxious, but calmed down quickly with reassurance. She was dressed and groomed appropriately, with an appropriate affect. Claimant advised that she has thoughts of suicide every day,

but would not act on them. Claimant was 62" tall and weighed 95 pounds. Her chest was clear and breath sounds were equal. No rales, wheeze, or rhonchi. Claimant had an occasional cough with forced end expiration, but, otherwise, does not cough constantly. There was no wheezing or accessory muscles of respiration. The pre and post albuterol shows no real evidence of reactive airway disease. Claimant was found to be underweight.

On August 19, 2010, the claimant attended an Independent Psychological Evaluation. The claimant reported that she began experiencing anxiety when she was 12. Claimant reported that her anxiety and fears have gotten worse over the years. Claimant stated that she was now taking Prozac and that it was helping, but that she rarely leaves the house due to her fear in public. The evaluator did not see any evidence of a thought disorder. Claimant did not exhibit evidence of hallucinations, delusions or obsessions. Claimant acknowledged fleeting, passive suicidal thoughts, but denied suicidal intent. Claimant exhibited evidence of an intense Anxiety Disorder characterized by agoraphobia, severe panic attacks and a constant sense of foreboding. Claimant's answers to tests administered showed clear evidence of her severe social anxiety, agoraphobia and fear of the world. Claimant feels she is alone within the world, feels useless and feels that her life has no direction or purpose. Claimant also reported feelings of guilt, sadness, self-blame, diminished self-esteem, a reduced capacity to experience pleasure or happiness, sleep disturbance, reduced interest in the external world and difficulty making decisions. Claimant also reported many obsessive compulsive characteristics, such as counting and having to repeat various tasks and rituals. The evaluator opined that the claimant would appear to have unimpaired capabilities to understand, retain and follow simple instructions and to perform and complete simple tasks. However, due to her severe anxiety disorder and agoraphobia, she would have severely impaired capabilities to interact appropriately and effectively with co-workers and supervisors and to adapt to changes in the work setting. The evaluator further opined that the claimant's severe anxiety disorder would result in severely impaired capacity to do work-related activities. The claimant was given a GAF of 49 (serious symptoms or serious impairment in social, occupational or school functioning). The claimant's prognosis was poor and claimant was determined to be in need of ongoing outpatient psychotherapy and supervision of psychotropic medications by a psychiatrist.

This Administrative Law Judge's interaction with the claimant at the hearing further supports the Independent Psychological Evaluation. The claimant was physically shaking, would not maintain eye contact, was extremely tearful and was soft-spoken and had a hard time answering questions. Even after several assurances from this Administrative Law Judge that everything was going to be alright, she continued to show signs of severe anxiety and had a hard time interacting with this Judge.

The claimant has presented medical evidence establishing that she does have some mental limitations on her ability to perform basic work activities. The medical evidence has established that the claimant has an impairment, or combination of impairments, that has more than a *de minimus* effect on the claimant's basic work activities. Further,



the impairments have lasted continuously for twelve months; therefore, the claimant is not disqualified from receiving MA-P benefits at Step 2.

The analysis would next proceed to Step 3, where the medical evidence of claimant's condition would be compared to the listings. In light of the medical evidence, listing 12.06 was considered. This Administrative Law Judge finds that the claimant meets the listing of 12.06. There are medically documented findings of 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 (i.e. leaving the house) and also medically documented findings of recurrent obsessions or compulsions which are a source of marked distress and these result in marked restrictions of maintaining social function and marked restriction in activities of daily living and these also result in a complete inability to function independently outside the area of claimant's parents' home. The claimant's mother credibly testified that the only time her daughter leaves the home is when she is forced to and even then she will have panic attacks. The claimant's mother also credibly testified that she and claimant's father are unable to have people over to the house as the claimant's anxiety escalates as she is unable to deal with a social situation. The claimant testified that she has to count her steps and calms herself by doing math problems in her head. Thus, this Administrative Law Judge finds the claimant meets listing 12.06 and should be considered disabled.

Even if the claimant had not been approved at Step 3, this Administrative Law Judge would find at Step 4 that claimant is unable to perform work in which she has engaged in, in the past. The claimant credibly testified that she quit her job as a cashier at Lowe's because it caused her too much anxiety. The Independent Psychological Examination found that the claimant's severe anxiety disorder would result in a severely impaired capacity to do work-related activities. Therefore, claimant is found to be unable to perform work in which she has engaged in, in the past.

Even though the claimant has been found to meet disability criteria, this Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other jobs.

At Step 5, this Administrative Law Judge must determine whether or not claimant has the residual functional capacity to perform some other jobs in the national economy. This Administrative Law Judge finds that the objective medical evidence on the record does establish that claimant would be unable to perform any other work due to the severe anxiety disorder which would result in a severely impaired ability to do work-related activities.

The claimant has presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department has not established that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. Therefore, the department's determination is REVERSED.

1. The department shall process Claimant's June 28, 2010 MA/retro-MA application and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in December, 2012, unless Claimant has received a favorable Social Security determination.

/S/  
Suzanne L. Morris  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: December 12, 2011

Date Mailed: December 12, 2011

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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