

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2011-3318
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 21, 2011
Macomb County DHS (36)

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 held in Sterling Heights, Michigan on Wednesday, September 21, 2011. The Claimant appeared, along with [REDACTED] and testified. The Claimant was represented by [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SRHT") for consideration. On February 23, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

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 an application for public assistance seeking MA-P benefits on October 27, 2010. (Exhibit 1)

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2. On January 25, 2011, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 2, pp. 1, 2)
3. The Department notified the Claimant of the MRT determination.
4. On April 26, 2011, the Department received the Claimant’s written request for hearing. (Exhibit 3)
5. On May 31, 2011 and February 13, 2012, the SHRT found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to shortness of breath, endocarditis, hypoglycemia, pulmonary emboli, anemia, and lesions.
7. The Claimant alleged mental disabling impairment(s) due to bipolar disorder, anxiety, and depression.
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5’4” in height; and weighed 115 pounds.
9. The Claimant has a limited education with an employment history of work at a part-time restaurant (failed work attempt of one week), and as a bar/waitress.

CONCLUSIONS OF LAW

The Medical Assistance 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, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Tables (“RFT”).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory

statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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 applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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; therefore is not ineligible for disability benefits 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 disability due to shortness of breath, endocarditis, hypoglycemia, pulmonary emboli, anemia, lesions, anxiety, depression, and bipolar disorder.

On [REDACTED] the Claimant was admitted to the hospital with complaints of shortness of breath and chest pain. A psychiatric evaluation found the Claimant with adjustment disorder with anxious mood, remote history of depression, polysubstance abuse (intravenous heroin abuse and cocaine), with a Global Assessment Functioning ("GAF") of 55. The Claimant was discharged on [REDACTED] with the diagnoses of respiratory failure secondary to pulmonary septic emboli, infected endocarditis tricuspid valve with methicillin resistant Staphylococcus, tobacco abuse, heroin abuse (on methadone), anemia, and pleuritis.

On [REDACTED] the Claimant attended a follow-up appointment. The EKG found the tricuspid regurgitation was moderate and the valve appeared to be mildly friable without significant regurgitation with normal left ventricular functioning. The Claimant needed no further medication.

On [REDACTED] a pap smear test found low grade squamous intraepithelial lesions. A study of the heart showed normal heart size with minimal chronic interstitial infiltration at the right and left perihilar region.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were tricuspid regurgitation and enlarged heart chamber. The ejection fraction was 55 percent. The Claimant's condition was stable.

On this same date, a Heart Classification form was also completed. The Claimant's functional capacity was a Class III and the therapeutic classification was a Class C.

On [REDACTED] a biopsy confirmed low grade squamous intraepithelial lesions in the cervix tissue. The Claimant was diagnosed with face numbness, foot numbness, and heart murmur.

On [REDACTED] the MRI of the lumbar spine was normal. The MRI of the brain showed maxillary sinusitis but was otherwise normal.

On [REDACTED] the Claimant sought treatment for bilateral hand numbness, foot numbness, and tingling of her face. The diagnoses were numbness, migraines, depression, and heart murmur.

On [REDACTED] the Claimant had heavy bacteria growth in her vagina.

On [REDACTED] the Claimant received treatment for an abscess on her arm.

On [REDACTED] the Claimant was admitted to a psychiatric hospital with depression, heroin use, and thoughts/plans of suicide. The Claimant's judgment was

severely impacted and her insight was very limited. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of major depressive disorder, recurrent severe without psychosis and opiate dependence. The GAF was 45.

On [REDACTED] the Claimant attended a consultative mental status examination with IQ testing. The Claimant's self-esteem was poor with feelings of worthlessness, hopelessness, and helplessness. The Claimant was found unable to manage benefit funds due to her propensity for relapse into substance abuse. The Psychologist opined that her abilities to perform work-related activities in a reliable, consistent, and persistent manner were severely impaired as were her abilities to respond appropriately to others, including co-workers and supervisors, as well as adapt to change. The Claimant was found able to understand, remember, and carry out simple instructions. The Claimant's full scale IQ was 85 (WAIS-IV). The diagnoses were mood disorder, not otherwise specified, with features of major depression and dis-regulation of impulses, primarily aggressive with atypical manicky reactions intermittently, or short duration, and possible hallucinatory psychotic-like reactions of hearing voices and feeling touched; post-traumatic stress disorder, panic disorder, opioid dependence (6 weeks free of heroin injections), nicotine dependency, and borderline personality disorder. The GAF was 45 and the prognosis was poor.

The Mental Residual Functional Capacity Assessment was also completed. The Claimant was markedly limited in 12 of the 20 factors.

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 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 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 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 shortness of breath, endocarditis, hypoglycemia, pulmonary emboli, anemia, lesions, anxiety, depression, and bipolar disorder.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a

medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractability; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

- h. Hallucinations, delusions, or paranoid thinking; or
- 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

AND

- B. Resulting in at least two of the following:
 - 1. Marked restriction on activities of daily living; or
 - 2. Marked difficulties in maintaining social functioning; or
 - 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 - 4. Repeated episodes of decompensation, each of extended duration;

OR

- C. Medically documented history of chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
 - 1. Repeated episodes of decompensation, each of extended duration; or
 - 2. A residual disease process that has resulted in such marginal adjustment that even minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 - 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In this case, the records reveal that in [REDACTED] the Claimant abused heroin, cocaine, and tobacco and had, in part, endocarditis and MRSA which improved and/or resolved. By [REDACTED] the Claimant no longer required medication. In [REDACTED] a study confirmed normal heart size. In [REDACTED] [REDACTED] the Claimant was admitted to a psychiatric hospital after overdosing on heroin having suicidal ideations. Three days later, the Claimant was discharged with the diagnoses of major depression and opiate dependence. The consultative evaluation revealed a full scale IQ of 85. The Claimant was able to follow, understand, remember, and carry out simple instructions. That being stated, the Claimant's ability to perform work-related activities was severely impaired as were her abilities to adapt to change. The records document poor self-esteem, feelings

of worthlessness, uselessness, hopelessness, and helplessness. Additionally, the evidence reveals anhedonia, appetite disturbance with weight change, sleep disturbance, decreased energy, thoughts of suicide and auditory hallucinations resulting in marked restrictions in maintaining social functioning and maintaining concentration, persistence, or pace. The Claimant's prognosis is poor. Ultimately, based on the evidence, the Claimant's mental impairment meets, or are the medical equivalent thereof, a listing within 12.00, specifically, 12.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

In some circumstances benefit payments can, or must, be restricted to someone other than the individual (program group). BAM 420. A protective payee is a person/agency selected to be responsible for receiving and managing the cash assistance on behalf of the individual (program group) as a third party. *Id.* Restricted payments are required in any of the following circumstances:

- Court-ordered shelter arrearage collection
- Third-party resource disqualification
- Minor parent
- Substance Abuse
- Client convicted of a drug-related felony
- Money mismanagement
- A child(ren) receiving FIP has a legal guardian
- Eviction or threatened eviction

Id. Restricted payment status is reviewed when appropriate but at least at every determination. *Id.* The client has the right to request and be granted a review of the restricted payment status every six months. *Id.* An individual (group) may request a hearing to dispute a decision to begin or continue restricted payments or dispute the selection of a protected payee. *Id.* Restricted payments are continued until the hearing matter is resolved. *Id.*

DECISION AND ORDER

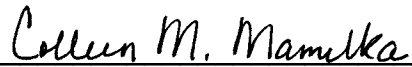
The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the October 27, 2010 application to determine if all other non-medical criteria are met and inform

the Claimant and her Authorized Hearing Representative of the determination in accordance with Department policy.

3. The Department shall, in light of the Claimant's substance abuse, evaluate the need for a protective payee (if Claimant seeks SDA benefits) in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review the Claimant's continued eligibility in March 2013 in accordance with Department policy.



Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 2, 2012

Date Mailed: March 2, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:

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- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

