

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-33657
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 17, 2011
DHS County: Oakland (63-04)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 November 17, 2011, in Pontiac, MI. Claimant appeared with her boyfriend, [REDACTED], and testified. Claimant was represented by [REDACTED]. The Department of Human Services (Department) was represented by [REDACTED].

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

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 July 28, 2010, Claimant applied for MA-P and retro MA-P to May 2010.
2. On January 25, 2011, the Medical Review Team denied Claimant's request.
3. On March 24, 2011, Claimant submitted to the Department a request for hearing.
4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 34 years old.
6. Claimant completed education through the 8th grade.

7. Claimant has employment experience (last worked 2006) in fast foods, mortgage processing and as a front desk person at a hotel.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from hip pain, arthritis, back pain, high cholesterol, serotonin syndrome, grand mal seizures, traumatic brain injury, depression, anxiety and post traumatic stress disorder.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has significant limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

CONCLUSIONS OF LAW

MA-P 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 administers MA-P 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 Bridges Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

The Claimant testified to the following symptoms and abilities: shaking and twitching, seizures occurring every other day, depression, anxiety, back and hips hurt, loss of teeth from falling from seizures, she passes out when having seizures, unable to cook, in weekly therapy, taking multiple medications, not able to drive, needs help with all chores, gets lost, poor memory, can stand 10 minutes, can sit 10 minutes, can walk a block, shaking impacts ability to maintain grip, hard to write things due to shaking, can lift 5 lbs, needs help with grocery shopping, avoids people, struggles to be around people, isolates self from others, avoids activities, eating is disrupted, racing thoughts, poor sleep, needs reminders to take medication, able to manage personal care, will go a week at a time without showering, will wear same clothes for a week, struggles with maintaining concentration, needs help with completing an employment application, struggles with reading due to inability to concentrate and inability to comprehend, gets frustrated and overwhelmed, monthly suicidal thoughts and loss of interest in all activities.

Claimant further testified her seizure and depressive conditions are still causing significant symptoms despite her maintaining her medications. Claimant testified she has been taking her medications for years and over the years, the medications have been changed to help reduce the number of seizures and symptoms occurring. Unfortunately, despite the medical treatment, Claimant still experiences regular grand mal seizures and significant depression and anxiety issues. Claimant did admit her inability to afford medications and her inability to remember to take her medications did, at times, impact her compliance. However, she testified she has successfully maintained her medications for a few years with only minimal interruption.

A consulting psychiatric examiner expressed concern about Claimant's ability to manage benefit funds due to her past history of drug and alcohol use. During the hearing, Claimant maintained she is not using drugs and alcohol. This consulting examiner indicated based on a one-time examination that Claimant had a GAF of 48 and suffered from major depressive disorder recurrent severe. This consulting examiner indicated Claimant would be optimally supported in a low stress and low social demanding position that allowed opportunities for her to lower her activity based upon her prevailing stress level. It is unclear from the physician's notation what position in reality the physician is indicating Claimant would be capable of performing.

Claimant's treating physician's notes and evaluations indicate ongoing issues with depression and GAF scores in the 40-50 range.

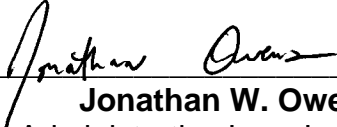
In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 11.02A and/or 12.04 or its equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

Therefore, Claimant is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of May 2010.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated July 28, 2010, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for December 2012.


Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 6, 2011

Date Mailed: December 6, 2011

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.

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- A reconsideration **MAY** be granted for any of the following reasons:
 - 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

cc:

