

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201139615
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 10, 2011
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 telephone hearing was held on October 10, 2011 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] and [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. On 3/30/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 5/31/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 6/9/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/23/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 8/1/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 37) based, in part, on a application of Vocational Rule 204.00.
7. As of the date of the administrative hearing, Claimant was a 41 year old female (DOB 6/14/70) with a height of 5'5 " and weight of 230 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or other drug abuse.
9. Claimant's highest education level completed was the 12th grade.
10. Claimant last received medical coverage in 2/2010.
11. Claimant claimed to be a disabled individual based on intracranial hypertension and depression.

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). DHS (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 6/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related

categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does not often make the program available. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- performs significant duties, and
- does them for a reasonable length of time, and
- does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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). Conclusory statements by a physician or mental health professional that an

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individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927.

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe

impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

Claimant did not contend to be limited in her performance of physical activities. She conceded that she had no restrictions concerning the ability to walk, stand, bend, squat, grasp or sit.

Claimant's contention was that she suffers from intracranial hypertension (IH), a disease which causes a build up of spinal fluid. She stated that she suffers from symptoms of the disease such as chronic headaches and dizziness.

Claimant also claimed to suffer from depression, possibly related to the IH. Claimant stated that she attempted suicide three times in her life, once as a child, once in 12/2010 and once in 1/2011.

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation.

A Medical Social Questionnaire (Exhibit 5-7) dated 4/7/11 was completed by an unknown social worker. It was noted that Claimant alleged problems of chronic headaches, bipolar disorder and intracranial hypertension. It was also noted that there are days when Claimant does not get out of bed, can't see and headaches so severe that she vomits. Claimant noted being prescribed the following medications: Clonazepam (.5 mg), Fluoxetine (20 mg) and Klonopin (.5 mg).

Various medical documents (Exhibits 9-17) stemming from Claimant's hospital stay from 1/14/11-1/19/11 were presented. It should be noted that Exhibits 11-14 were excluded based on motion of the Claimant who stated that the documents contained interview responses from her which she denied ever providing. In 1/2011, Claimant was hospitalized following an attempted suicide from an overdose of Ambien. It was noted that Claimant had a history of alcohol abuse, though Claimant denied this. It was also noted that Claimant obtained a college degree, though Claimant testified she did not complete college. A psychological evaluation noted Claimant's condition as stable.

The final report (Exhibits 18-22) from the hospital stay was submitted. It was noted that while hospitalized, Claimant felt homicidal and suicidal though she did not feel this way

at the time of discharge. It was recommended that Claimant continue taking Prozac and Klonopin and that she follow-up with a mental health facility. Her prognosis was guarded.

An Activities of Daily Living (Exhibits 23-27) dated 4/7/11 form was presented. Claimant noted that she has trouble sleeping due to pain and nightmares. Claimant noted she lost interest in taking care of personal needs. Claimant noted a loss of appetite and a desire to eat less. Claimant noted she contributes to housework and does her own shopping. Claimant stated she used to read one book per day but stopped because she no longer has the attention span to do so.

Claimant noted her last employer fired her due to her illness. Claimant testified that her employer of approximately 10 years wanted her to get a medical clearance before returning to employment but her physician would not give her the clearance due to medical concerns.

A psychological intake assessment (Exhibits 31-34) from a mental health facility was performed on approximately 1/24/11; the corresponding report was presented as Exhibits 31-36. Claimant's prior suicide attempts were noted including one from 12/2010 when Claimant tried to overdose on Tylenol but threw up the pills. Depression symptoms such as crying spells, lethargy, inexplicable anger, feeling isolated and withdrawn, anhedonia, sleeping difficulties and loss of appetite were noted.

The intake assessor provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM4). Axis I represents the acute symptoms that need treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale.

On Axis I, Claimant was diagnosed with suffering from recurrent major depressive disorder and bipolar disorder. Axis II was deferred. Axis III noted Claimant's complaints of arthritis, bronchitis and headaches. Axis IV Noted several stressors including: problems with support group, social environment, occupational, economic and health care access.

Claimant was given a GAF of 43. A score within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

Psychiatrist notes (Exhibits 35-36) from Claimant's treating psychiatrist dated 4/7/11 were presented. It should be noted that the notes were handwritten and for the most part, illegible. A provisional diagnosis was provided which was relatively consistent with the intake diagnosis. Claimant's GAF was noted as 45.

A letter (Exhibit 38) dated 10/7/11 from Claimant's treating psychiatrist was presented. The psychiatrist stated Claimant was "totally disabled" and was expected to be so for two years. It was also noted that unspecified childhood problems negatively affected her ability to function.

Claimant also presented documents (Exhibits 39-44) concerning her leave of employment from 2/2010. The documents were not notable other than tending to verify Claimant's testimony that she was unable to continue employment due to a lack of medical clearance.

Based on the presented evidence, there was no medical verification for Claimant's complaint of intracranial hypertension. Claimant provided very credible testimony that was consistent with having the illness, however, there was an absence of any diagnosis for the disease from any treating physician.

Concerning Claimant's psychological issues, there was sufficient evidence to establish Claimant would face significant obstacles in performing basic work activities such as communicating, using judgment and remembering instructions. Claimant's disinterest caused by the depression would create significant problems in many aspects of a work setting.

There is also sufficient evidence that the issues have and will continue to last for the required 12 month duration to establish a severe impairment. Claimant's treating physician recommended a two year deferral from work and there is no reason to believe that Claimant's psychological barriers will improve any time in the immediate future. It is found that Claimant established suffering a severe impairment and the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If the claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant established a severe impairment based on depression and/or bipolar disorder. Mental impairments are described under listing 12.00. Depression and bipolar disorders fall under affective disorders; the listing reads:

12.04 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

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 of 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 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 supportive living arrangement, with an indication of continued need for such an arrangement.

Concerning Part A of the above listing, there was sufficient evidence to show Claimant suffers from at least four of the listed symptoms. Hospital documents from Claimant's suicide attempt and subsequent psychological report documents made reference to sleeping problems, appetite disturbance (though there was no evidence of weight change), a loss of interest in activities, decreased energy, difficulties in concentration and suicidal thoughts. It is found that claimant established meeting Part A of the above listing.

Whether Claimant meets Part B of the above listing is less clear. Claimant is not markedly limited in daily activities as she does her own shopping and grooming. Claimant is even capable of driving.

There is some evidence of difficulties in social functioning such as withdrawing from relationships. However, Claimant was consistently described as cooperative in medical interviews. There was no evidence of anti-social behaviors such as fighting or a pattern of altercations. Overall, it would be a stretch to consider Claimant as markedly impaired in social functioning.

There is more evidence of marked difficulties in maintaining concentration. Claimant was terminated from employment of ten years in 2010 due to her inability to obtain a medical clearance. Claimant's description of her depression symptoms such as anhedonia and her statement that she no longer reads due to her dwindling attention span tend to support marked difficulties in concentration. It is found that Claimant has marked difficulties in maintaining concentration.

Claimant's psychological condition appears to be worsening. Claimant attempted two suicides, once in 12/2010 and once in 1/2011. Claimant's behavior of continued withdrawal, isolation, excessive sleep and other symptoms tends to show significant

ongoing problems. Claimant's marginally higher GAF increase (43 in 1/2011 and 45 in 4/2011) tends to show little progress in Claimant's condition.

Even if Claimant's condition is not worsening, a potential requirement for Part B, it was established that Claimant is in need of a highly supportive living arrangement and a continued need for the arrangement. This is a potential requirement for Part C. Claimant testified that she lives with her mother and appears to be in need for a continuance for this arrangement. Hospital documents tended to show that Claimant was only released into her mother's care because she would have been unsafe if left on her own. Based on the evidence, it is found that Claimant meets the listed impairment for affective disorders based on Parts A and B or Part C. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in denying Claimant's MA application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It was already found that Claimant is disabled for purposes of MA benefits based on the finding that Claimant met the SSA listing for affective disorders. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly denied Claimant's application for SDA benefits by determining that Claimant was not a disabled individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 3/30/11;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA and SDA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA and/or SDA benefits, to schedule a redetermination in one year from the date of this administrative decision.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 14, 2011

Date Mailed: October 14, 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.
- 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.

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

CG/ hw

cc:

