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

IN THE MATTER OF:

[redacted]

Reg. No. 201140717
Issue No. 2009 4031
Case No. [redacted]
Hearing Date: October 17, 2011
Macomb County DHS (12)

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 17, 2011 from Detroit, Michigan. The claimant appeared and testified. 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 9/9/10, Claimant applied for SDA and MA benefits.

2. Claimant's only basis for MA and SDA benefits was as a disabled individual.

3. On 1/19/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibits 46-45).

4. On 1/24/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 48-47) informing Claimant of the denial.

5. On 2/2/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.

6. On 8/2/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 50-49) based, in part, on application of Vocational Rule 203.29.

7. As of the date of the administrative hearing, Claimant was a 45 year old female (DOB 1/26/66) with a height of 5'0 '' and weight of 150 pounds.

8. Claimant smokes between 1-40 cigarettes per day and has no known relevant history of alcohol or illegal substance abuse.

9. Claimant's highest education year completed was the 12th grade.

10. Claimant has no current health insurance and has not received any medical coverage for several years.

11. Claimant stated she is a disabled individual based on impairments of depression, anxiety, seasonal affect disorder, Epstein-Barr virus, bipolar disorder and physical problems related to her knee.

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 controlling DHS regulations are those that were in effect as of 1/2011, the month of the application which Claimant contends was wrongly denied. 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 always offer the program to applicants. 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 CRF 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).

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).

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. It should be noted that the documents were numbered from top to bottom in reverse numbering order; thus, a higher number reflects the first page of a document. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

Claimant completed an Activities of Daily Living (Exhibits 7-3) dated 9/17/10, a questionnaire designed for clients to provide information about their abilities to drive, shop, perform housework, maintain social relationships and other day-to-day activities. Claimant noted having difficulties sleeping due to restlessness and insomnia. Claimant stated she takes 1-3 hour naps during the day. Claimant stated she has difficulties with personal needs such as grooming, bathing and dressing. She states that she lacks energy and lost her ability to make decisions. Claimant stated she makes all of her meals but has difficulties on same days "due to energy level". Claimant indicates she does her own laundry but noted that it is exhausting for her. Claimant stated that she does not shop due to anxiety and an inability to drive, confusion and memory loss. Claimant stated she receives help with shopping but did not indicate who assists her or how she is assisted. Claimant stated she visits with friends 2-3 times per week. She states that her friends also assist her with attending doctor appointments.

A Medical Examination Report (Exhibit 9-8) dated 9/13/10 from Claimant's treating physician was presented. The physician provided diagnoses of anxiety and depression. The physician noted Claimant's condition as stable.

A Medical- Social Questionnaire (Exhibits 12-10) dated 9/7/10 was completed by Claimant. Claimant noted the following illnesses: anxiety, unable to drive, limited phone usage, depression, stress attacks and feeling overwhelmed. Claimant noted monthly meetings with a physician for treatment of anxiety and depression. Claimant listed four hospital visits- each concerning kidney stones. Claimant listed taking Celex (40 mg) and Zanax (.25 mg).

A Social Summary (Exhibits 13-12) dated 9/30/10) completed by a DHS specialist was presented. Claimant's impairments of depression and anxiety were noted.

Documents (Exhibits 36-22) from hospital admissions from 7/2010 were presented. The hospital records relate to Claimant's complaints of pain related to kidney stones. Claimant did not claim that her kidney stones related to her claim of disability. A passing reference to a history of anxiety was noted. The documentation concerning kidney stones was not otherwise relevant to Claimant's claim of disability.

A letter (Exhibit 38) dated 10/4/10 from Claimant's treating therapist was presented. The therapist noted Claimant was diagnosed with major depressive order in 1/2008. It was noted Claimant's depression improved with therapy sessions (which decreased due to financial considerations). It was noted Claimant's depression began to exacerbate in 2/2010. It was noted that Claimant became fearful of driving in 6/2010 after involvement in a car accident. The therapist noted Claimant subsequently suffered severe panic attacks when she gets into a car. It was noted that Claimant's son attempted suicide causing a worsening of the depression. Claimant was given 3-5 weekly therapy sessions on a pro bono basis. Claimant was noted as improving but still having "a great deal of difficulty".

A Mental Status Examination dated 11/19/10 from a non-treating therapist was performed; the corresponding report (Exhibits 44-40) was provided. Claimant reported suffering Epstein-Barr virus, seasonal affect disorder and panic attacks when in cars. It was noted that Claimant reported dealing with depression since the age of 16. Claimant was described as cooperative, polite and logical. Claimant denied any psychotic symptoms, feeling homicidal or feeling suicidal.

Claimant was tested on the Wechsler Adult Intelligence Scale IV (WAIS4). The WAIS4 is an IQ test which measures verbal comprehension, perceptual reasoning, working memory and processing speed. A Wide Range Achievement Test III (WRAT3) which measured Claimant's reading, spelling and arithmetic abilities was also administered. Claimant's total performance placed her "solidly in the average to low average range of intellectual functioning". It was concluded Claimant had no significant cognitive impairments.

The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4^{th} 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.

Claimant was diagnosed with a generalized anxiety disorder with panic attacks managed with medication on Axis I. Axis II was “none”. Axis III noted “Epstein bar, seasonal affect disorder”. Axis IV noted that Claimant lost her company to her partner. Claimant’s GAF was 55. A score within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. A prognosis of “fair to guarded” was provided.

A second psychological examination was performed on Claimant by a non-treating physician on 3/10/11 the corresponding report (Exhibits 58-53) was presented. Claimant’s medical history involving depression and anxiety attacks was again noted. It was also noted that Claimant’s son attempted suicide in 3/2010. It was noted Claimant reported a diagnosis of bipolar disorder from her therapist. The following depression symptoms were reported by Claimant: appetite disturbance, sleep disturbance restlessness, low energy, social isolation, loss of interest in pleasurable activities and feelings of hopelessness and helplessness.

A scheduled knee replacement surgery was noted. Claimant testified that she can not proceed with the surgery due to a lack of medical insurance.

Claimant stated she stays away from interpersonal relationships and only sees people she can trust. Claimant stated she had several previous interests but had none at the time of the examination. Claimant reported doing chores as needed, though she used to “clean obsessively”. Claimant reported an incident whilst shopping where she cried in the aisle because she could not make a decision over buying pasta.

Claimant reported gaining 30 pounds of weight over the course of a year. She stated the thought of driving terrified her, and even as a passenger she gets hives. Claimant’s self-esteem was describes as poor and insight was described as fair. The therapist described Claimant’s mental activity as spontaneous and organized. Again, Claimant denied any psychotic and suicidal ideation.

Claimant’s was given an Axis I diagnosis of major depressive disorder, severe and recurrent, without psychotic features. No diagnosis was given for Axis II. Knee pain, Epstein-Barr virus were noted on Axis III. Occupational and familial difficulties were noted on Axis IV. Claimant’s GAF was 48. A GAF 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).” Claimant’s symptoms were described as “persistent” and a guarded prognosis was provided.

Both presented psychological examinations appeared to be performed by competent and thorough examiners. Accepting the corresponding reports as accurate, a worsening

of Claimant's condition was established based on a decreasing GAF score from 52 to 48.

Claimant provided no supporting evidence from a treating physician concerning a need for knee replacement surgery. Claimant provided minimal testimony concerning her knee issues. The need was referenced in Claimant's psychological examinations but only in passing. Claimant did not allege any walking, standing or lifting limitations that would affect her ability to perform basic work activities.

Similarly, there is no evidence that Epstein-Barr virus and seasonal affect disorder contribute little to the disability analysis. Though the diagnoses were referenced in two psychological examinations, there was no evidence explaining how either affected Claimant's work abilities.

The diagnosis of depression or anxiety disorder was well-established. Two psychological examinations revealed significant problems in Claimant's psychological functioning. Several psychological disorder symptoms were noted including those that would affect Claimant's ability to socially function and use of judgment.

There was little to no evidence that Claimant's psychological impairments would not continue for the 12 month durational requirements. It is found that a severe impairment was established concerning psychological impairments.

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 and/or anxiety disorder. Mental impairments are described under listing 12.00. Depression, anxiety disorders and bipolar disorders all fall under the listing for 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.

The analysis of whether Claimant's symptoms meet the above listing will begin with Part C. Listing 12.00 defines episodes of decompensation as exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. Claimant suffers some episodes of decompensation in the form of panic attacks. The attacks occur consistently in the context of Claimant driving. The attacks appear to be less severe when Claimant is a passenger in an automobile. There is also evidence that Claimant suffered a panic attack and a crying spell when shopping. Though there is evidence of reoccurring episodes of decompensation in the form of panic attacks, there is no evidence that the episodes are steadily increasing or becoming longer. Stronger evidence of decompensation such as mental hospitalizations is nonexistent.

There is no medically-based evidence that a minimal change in mental demands or environment would cause decompensation. Both psychological examiners did not comment on whether an obligation to work would adversely affect Claimant's psyche. The letter (Exhibit 38) from Claimant's treating therapist commented on Claimant's current psyche though no reference was made to how a change would impact Claimant's ability to function.

At the time of hearing, Claimant lived alone. Evidence supported finding that Claimant receives occasional assistance with shopping and chores. The need for such assistance does not qualify as a need for a highly supportive living arrangement. Neither Claimant's therapist nor the psychological examiners provided any statements that Claimant requires a particularly supportive living arrangement.

Based on the presented evidence, it is found that Claimant fails to meet Part C of the above listing. The analysis will move to whether Parts A and B of the above listing were satisfied.

The medical records routinely referred to Claimant's loss of interest in activities. Claimant specifically referred to several interests such as gardening which she no longer performs, presumably due to depression. Claimant's statement and the psychological examination reports also refer to Claimant's reporting of sleeping difficulties and the need to take daily naps. Claimant's difficulty in concentration was established and best illustrated by Claimant's difficulties in making decisions while shopping. Claimant's decrease in energy was also established within statements made

by Claimant as documented by the psychological exam reports and the Activities of Daily Living document. Claimant also noted a 30 pound weight gain over the past year which is significant based on Claimant's relatively stable weight prior to the gain.

In all, Claimant established suffering at least four of the required symptoms to meet the listing for Part A of affective disorders. Claimant must also establish meeting Part B of the listing to be found disabled.

Repeated episodes of decompensation, each of extended duration was already ruled out as a basis to meet the above listing. The three remaining requirements of Part B are discussed below.

Listing 12.00 provides the following guidance concerning evaluation of marked restrictions in daily living:

> *Activities of daily living* include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office. In the context of your overall situation, we assess the quality of these activities by their independence, appropriateness, effectiveness, and sustainability. We will determine the extent to which you are capable of initiating and participating in activities independent of supervision or direction.
>
> We do not define "marked" by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions.

Claimant's biggest obstacle in daily living concerns driving. Note that driving is not referenced by SSA in examples of daily activities' taking public transportation is referenced. There was evidence to infer that Claimant would struggle with public transportation based on increasing difficulties in dealing with people. The actual transportation also would be problematic for Claimant based her fear of vehicles following a car accident. Other daily living activities do not appear as problematic. Claimant lives alone and manages to perform any necessary cleaning, grooming and bathing activities without any assistance. Claimant cited no particular difficulties in cooking or paying bills. Based on the overall evidence, it is found that a marked restriction in performing daily activities was not established.

Listing 12.00 provides the following guidance concerning evaluation of social functioning:

> *Social functioning* refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers.

There was no evidence of altercations, anti-social criminal activity or other obvious evidence of social dysfunction. There was evidence that Claimant is increasingly socially isolated and exhibiting anti-social behavior. The examination report dated 3/10/11 noted Claimant's response to an inquiry about interpersonal relationships, "Right now, I stay away from them. I feel like an open wound. I only see people I can trust." The previous psychological examiner noted that Claimant rarely goes out due to her panic attacks and anxiety (see Exhibit 43).

Though Claimant does not exhibit psychotic and paranoid features of anti-social behavior, there was sufficient evidence that Claimant's anxieties in leaving the house are legitimate. If Claimant has anxieties simply leaving the house, it is difficult to construe her social functioning abilities as anything less than markedly difficult.

Listing 12.00 provides the following guidance concerning evaluation of concentration, persistence or pace:

> *Concentration, persistence or pace* refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence

In a psychological examination, Claimant's stream of mental activity was deemed "spontaneous and organized". Her speech was similarly noted as "relevant, organized, and without ideation." Claimant capably completed a WAIS-IV test. Overall, there was insufficient evidence to find Claimant markedly limited in concentration and pace. It is found that Claimant is not so markedly limited and accordingly, does not meet the SSA listing for affective disorders.

Listing 12.06 covers anxiety-related disorders. This listing reads:

> **12.06** ***Anxiety-related disorders***: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders. 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 both A and C are satisfied.
>
> A. Medically documented findings of at least one of the following:
>
> 1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
>
> a. Motor tension; or
>
> b. Autonomic hyperactivity; or
>
> c. Apprehensive expectation; or
>
> d. Vigilance and scanning; or
>
> 2. 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; or
>
> 3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
>
> 4. Recurrent obsessions or compulsions which are a source of marked distress; or
>
> 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;
>
> 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. Resulting in complete inability to function independently outside the area of one's home.

The above lisitng is rejected for similar reasons to the rejection of listing 12.04. Part B of the above listing mirrors that of Part B of Listing 12.04 which was considered and rejected. Part C is somewhat tempting to accept however Claimant currently has the ability to function outside of her house though she is appears to show some deterioration which may eventually lead her to the point of complete inability to function. Based on Claimant's current circumstances, Part C is rejected and thus, Listing 12.06 is rejected.

The listing for major joint dysfunction (Listing 1.02) was also considered and rejected. Though Claimant may have pain and dysfunction in her knee, there was insufficient evidence to show Claimant meets the requirements for the listing, particularly an inability to ambulate effectively.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the disability analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id*.

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations

Claimant performed various jobs for SGA within the last 15 years. Most impressively, she co-owned a business. Claimant also had various clerical jobs which required similar duties to those performed while she owned a business. Claimant described her similar job duties and skills for each of her past jobs; those duties and skills include: significant telephone usage, typing, local traveling, public speaking and occasional research.

There was evidence that Claimant's condition is deteriorating and may devolve into an inability to perform some past job duties. Presently, the evidence tended to establish that Claimant is capable of physically and psychologically all past performing job duties. It was established that Claimant is psychologically hampered and may have difficulties, however, not such that she could not perform clerical duties. It is found that Claimant is capable of performing past employment. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits on the basis that Claimant is not a disabled individual.

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 has already been found that Claimant is not disabled for purposes of MA benefits, based on the finding that Claimant is capable of performing past relevant employment. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly denied Claimant's application for SDA benefits on the basis that Claimant is 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 properly denied MA and SDA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.

201140717/CG

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

Date Signed: 11/23/11

Date Mailed: 11/23/11

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.

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: [redacted]