

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

IN THE MATTER OF:

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████████████████████

Reg No.: 2012 67531
Issue No.: 2009
Case No.: ██████████
Hearing Date: November 7, 2012
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in person hearing was held in Madison Heights, Michigan on November 7, 2012. The Claimant appeared and testified. Witness ██████████ also appeared. ██████████ ██████████ ██████████ ██████████ the Claimant's Authorized Hearing Representative, (AHR) also appeared on Claimant's behalf. ██████████, and Assistance Payments Worker, appeared on behalf of the Department of Human Services ("Department") and ██████████, the assigned caseworker did not appear at the hearing.

ISSUE

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

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 November 17, 2011 the Claimant submitted an application for public assistance seeking MA-P and retro MA-P (August 2011).
2. On February 6, 2012 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)

3. The Department notified the Claimant of the MRT determination on May 22, 2012.
4. On June 22, 2012, the Department received the Claimant's timely written request for hearing.
5. On July 9, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. Exhibit 2
6. An Interim Order was issued on November 14, 2012 which ordered the Department obtain additional new medical evidence to be submitted to the State Hearing Review Team. The new medical evidence was submitted to the SHRT on March 6, 2013.
7. On May 16, 2013 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleged mental disabling impairment(s) due to Bipolar Disorder, Severe Depression and Anxiety.
9. The Claimant has not alleged physical disabling impairments.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; the Claimant is now [REDACTED]. The Claimant was 5'6" in height; and weighed 145 pounds.
11. The Claimant has a 10th grade education. The Claimant attended special education classes for both reading and math and has poor math skills. The Claimant has a limited work history working at a restaurant as a waitress. The Claimant also attempted to do hair styling without success.
12. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 Bridges 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) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a) (4) (i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a) (b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a (e) (2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c) (2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether

the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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 based on mental disabling impairments due to Bipolar Disorder, Severe Depression and Anxiety.

A summary of the Claimant's Medical evidence follows.

The Claimant was admitted to the hospital on [REDACTED] after jumping from a two story structure. The Claimant was intoxicated and had multiple head fractures. The Claimant was hospitalized for 5 days at [REDACTED], an in-patient psychiatric hospital. The discharge diagnosis was mood disorder, alcohol dependence in early remission, anxiety disorder, and borderline personality disorder with a GAF of 50. During course of treatment noted excessive anxiety and worry, difficulty controlling anxiety, impaired concentration. The Claimant was assessed as a suicide risk. The Claimant's jaw was wired shut due to multiple fractures. The Claimant was discharged improved and no detoxification for alcohol was necessary as liver enzymes were improved.

The Claimant's treating psychiatrist performed a psychiatric examination dated [REDACTED]. The exam noted the Claimant was very argumentative, crying poor impulse control, with depression, anxiety, denied hallucination, and noted judgment was impaired. The diagnosis was bipolar disorder, with history of opioid dependence and alcohol dependence. GAF was 40. The examiner/treater had been seeing the Claimant since March 2012. A follow up exam concluded with same diagnosis and GAF of 45.

The treating psychiatrist also completed a Mental Residual Functional Capacity Exam. The Claimant was found markedly limited in the following categories, understanding and memory, ability to understand and remember one or two step instructions, ability to understand and remember detailed instructions. Sustained Concentration, ability to carry out detailed instructions, ability to maintain attention and concentration for extended periods; ability to work in coordination with or proximity to others without being distracted by them and ability to make simple work related decisions. Social Interaction, markedly limited in ability to accept instructions and respond appropriately to criticism from supervisors, ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. Adaption, Claimant was markedly limited in ability to respond appropriately to change in the work setting, ability to set realistic goals or make plans independently of others.

The examiner also evaluated the Claimant as moderately limited indicating that the Claimant's capacity to perform the activity was impaired. The Claimant was moderately limited in ability to interact appropriately with general public and to ask simple questions or request assistance. The Claimant was also moderately limited in ability to travel in unfamiliar places or use public transportation. The Claimant was moderately limited in ability to carry out simple one or two step instructions, ability to perform activities within

a schedule, maintain regular attendance and be punctual within customary tolerances and ability to maintain a normal workday and worksheet without interruptions from psychologically based symptoms and to perform a consistent pace without an unreasonable number and length of rest periods.

A review of the Claimant's treatment records was also made. The records indicate that a treatment history of depression and manic episode, which can last from a day to a week, her manic phases can last up to 4 weeks. The diagnosis was bipolar manic with depression and alcohol abuse in remission opioid in remission.

A consultative psychological assessment was performed on [REDACTED]. The exam diagnosis was bipolar disorder, most recent episode depressed, severe without psychotic features, generalized anxiety disorder, panic disorder with agoraphobia. The medical source statement noted that the Claimant was capable of managing her income but at this time her judgment is a question. Claimant would have difficulty maintaining standards of behavior and safety issues. She would not appear capable of maintaining standards of work behaviors and her ability to communicate does appear to present problems. Her ability to respond to changes in her work setting and be aware of hazards would presume to be poor. Claimant is depressed. She continues to have mood swings and she has no insurance to seek treatment. A psychiatric evaluation with a medication review is strongly recommended. She is taking a great deal of medications and she is sleepy and has difficulty talking. Continue involvement in AA/NA is also recommended.

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 some objective medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* 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 asserts mental disabling impairments due to Bipolar Disorder, Depression and Anxiety. 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 this disorder 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;

In this case, medical records document ongoing treatment for bipolar disorder. Medical records document a pervasive loss of interest in activities, episodes of extreme anxiety, and extreme depression and marked restrictions of social functioning and difficulties maintaining concentration, persistence or pace as well as adaption. The Claimant has been treating consistently with breaks only due to incarceration and hospitalization. The Claimant sees her Psychiatrist monthly and participates in therapy with her case manager monthly. The Claimant also participates in AA for her alcohol abuse history. Her last GAF score was 40 and have ranged from 40 to 50. The Claimant credibly testified that she suffers from emotional problems and that she has difficulty concentrating, very low motivation and needs to be told to shower. The Claimant currently lives with a friend who took her in as she was homeless, This individual credibly testified that Claimant needs help with reading and filling out forms, confirmed he needs to remind her to shower and eat. He further testified that Claimant has difficulty getting out of bed in the morning and that she cannot stand still or sit for any period of time. Claimant needs constant reminder to stay on track and loses focus. It takes her an hour or more to get dressed or shower due to loss of focus. The witness also confirmed that Claimant attends AA daily.

In light of the Claimant's past alcohol abuse and drug use and present sobriety and attendance at AA, it is determined that drugs and alcohol were deemed not material to the Claimant's mental impairments.

The records and evaluations of the Claimant's treating psychiatrist indicate that the Claimant will need continuing treatment and is, as of [REDACTED], markedly limited in maintaining social functioning as well as concentration and persistence, social interaction and adaption.

A thorough consultative psychiatric examination summarized above clearly noted the Claimant's prognosis was not favorable. The DHS 49 E summarized in detail above also found the Claimant markedly impaired in areas of social functioning, working with others and being distracted by them.

As a result, the medical records and testimony demonstrate clearly that the Claimant has marked restrictions in daily living and social functioning and adaptation and has a GAF score which fluctuates but on average is low. Deference was also accorded to the medical opinion of the Claimant's treating psychiatrist. The evaluations of the treating physician and the medical conclusion of a "treating " physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record under 20 CFR§ 404.1527(d)(2),

Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent of, a listed impairment within 12.00, specifically 12.04 A , 3 b, 1-3 Bipolar Syndrome. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

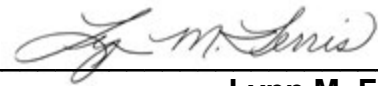
In this case, the Claimant is found disabled for purposes of the MA-P program. In light of this Decision the Claimant may consider applying for State Disability Assistance Program.

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 November 17, 2011 application for MA-P and retro MA-P to August 2011 and determine the Claimant's eligibility and determine if all other non-medical criteria are met and inform the Claimant and her AHR of the determination in accordance with Department policy.
3. The Department shall review the Claimant's continued eligibility in June 2014 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 10, 2013

Date Mailed: June 10, 2013

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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]