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

IN THE MATTER OF:

Reg No.: 2012-27307

Issue No.: 2009

Case No.:

Hearing Date: March 22, 2012 Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

## **HEARING DECISION**

This matter is before the undersigned Administ rative 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 conducted from Detroit, Michigan on Thursday, March 22, 2012. The Claimant appeared, along with her Case Manager, and testified. appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the subm ission of additional medical records. The evidence was received, reviewed, and forwar ded to the State Hearing Review Team ("SHRT") for consider ation. On May 23, 2012, this office received the SHRT decision which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

## ISSUE

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

# **FINDINGS OF FACT**

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

1. The Claimant submitt ed an application for public assistance seeking MA-P benefits on August 22, 2011. (Exhibit 1, pp. 7 - 22)

- 2. On December 14, 2011, the Medical Re view Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 23, 24)
- 3. On December 22, 2011, the Departm ent notified the Cla imant of the MRT determination.
- 4. On January 19, 2012, the Department received the Claimant's timely written request for hearing. (Exhibit 1, pp. 3, 4)
- 5. On February 24, 2012, the State H earing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
- 6. The Claimant alleged physical disabl ing impairments due to back pain, sciatica, restless leg syndrome, double vision, irrit able bowel syndrome ("IBS"), diarrhea, and anemia.
- 7. The Claimant alleged mental dis abling impairments due to post-traumatic stress disorder, bipolar disorder, extrem e anxiety, borderline agoraphobia, and personality dysfunction.
- 8. At the time of hearing, the Claimant was years old with a birth date; was 5' 4" in height; and weighed 150 pounds.
- 9. The Claimant has the equivalent of a high school education with some vocational training and an employment history in ins urance enrollment/billing, as a receptionist, and as an office manager.
- 10. 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 Bridge's Administrative Manual ("BAM"), the Bridges Elig ibility 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 im pairment which can be expected to result in death or which has lasted or can be expect ed 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 esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinica l/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities o r ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) 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 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 indi vidual'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 f unctional capacity is the most an indiv idual can do d espite the limitations based on all rele vant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity ass essment is ev aluated at both steps four and five. 20 CFR 41 6.920(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 indiv idual has the responsibility to prove disability. 20 CFR 4 16.912(a). An impair ment or combi nation of impairments is not

severe if it does not signific antly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 2 0 CFR 41 6.920a(a). First, an i ndividual's pertinent sym ptoms, signs, a nd 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 whic h the impairment(s) interferes with an individual's ability to func tion independently, appropriately, effectively, and on Id.; 20 CFR 416.920a(c)(2). Chronic m ental disorders, structured sustained basis. and the effect on the overall degree of settings, medication, and other treatment functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social f unctioning; concentration, persistence or pace; and episodes of decompensat ion) are consider ed when deter mining an indiv idual'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 repr esents a degree of limitation t hat 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 CF R 416.920a(d)(2). If the severe mental im pairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CF R 416.920a(d)(3).

As outlined above, the first step looks at the i ndividual's current work activity. In the record presented, the Claiman t is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impa irment(s) is considered under St ep 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 seevere. 20 CFR 416. 920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an in dividual's physical or mental ability to do basic work activities regardless of

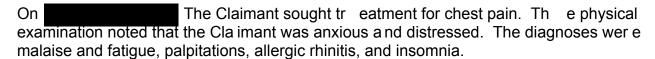
age, education and work exper ience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

- 1. Physical functions such as wa lking, 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.

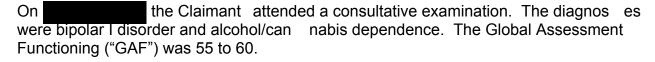
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The second step allows for dismissal of a disability claim obviously lacking in medical merit. Higgs v Bowen, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen out claims that 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 Cla imant alleges disa bility due to back pain, sciat ica, restless leg syndrome, double vision, IBS, diarrhea, anemia, post- traumatic stress disorder, bipolar disorder, extreme anxiety, borderline agoraphobia, and personality dysfunction.



On a physical was performed resulting in the diagnoses of atopic dermatitis, allergic rhinitis, and IBS.



On a Psychiatric/Psychological Examination Report was completed on behalf of the Claimant. Symptoms included crying spells, insomnia, withdrawing an d isolating, anhedonia, f ear of leav ing her house alone, fear of public and being around people, and sleep disturbance. The diagnoses were major depressive disorder, severe, recurrent; bipolar I disorder, severe; post-traumatic stress disorder; generalized anxiety; cannabis abuse; and alcohol abuse. The GAF was 35.

On a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was markedly limited in 4 of the 20 factors and moderately limited in 11 factors.

On a medication review was performed. The diagnoses were bipolar I disorder (most recent epi sode depressed) severe with psychosis; major depressiv e disorder, recurrent, severe with psychosis ; generaliz ed anxiety disorder; and pos t traumatic stress disorder. The GAF was 35.

As previously noted, the Claim ant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that she does have physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted continuous ly for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claim ant has alleged physical and mental disabling impairments due to back pain, sciatica, re stless leg syndrome, double vision, IBS, diarrhea, anemia, post-traumatic stress disorder, bipolar disorder, extreme anxiety, borderline agoraphobia, and personality dysfunction.

Listing 12.00 encompasses adult mental disorder s. The evaluation of disab ility on the basis of mental dis orders requires doc umentation of a medically determinable impairment(s) and consideration of the degr ee in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impai rment(s) of the required duration must be established through medical evidence cons isting of sy mptoms, si gns, and laboratory findings, to

include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evid ence to (1) establis h the presence of a medically determinable ment al impairment(s), (2) asse ss the degree of functional limitation t he impair ment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The evaluation of disability on the basis of mental disorder s requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

Listing 12. 04 defines affective disorders as being c haracterized by a disturbance of mood, accompanied by a full or partial m anic or depressive sy ndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persistence, ei ther 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 activ ities that have a h igh probab ility 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 maintain ing concentration, persistence, or pace; or
  - 4. Repeated episodes of decompensation, each of extended duration;

### OR

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

In this case, the evidence establishes that the Claimant suffers with bipolar I disorder (severe with psychos is), major depression (severe with psychosis), post traumatic stress disorder, and anxiety. The evidence confirms crying spells, insomnia, isolation, anhedonia, sleep dist urbance, and agoraphobia. The Claimant's most recent GAF scores (we re 35. A GAF of 35 represents some impairment in reality testing or communication of OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood. The evidence shows that the Claimant has a loss of interest in activities; decreased energy; difficulties concentrating; and halluc inations resulting in marked restrictions in social functioning, persistence, concentration, and pace. In light of the for egoing, it is found that the

Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment within 12.00, specifically, 12.04. Accord ingly, the Claimant is found disabled for purposes of the MA-P benefit 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 August 22, 2011 application to determine if all other non -medical criteria are met and inform the Claimant and her Authorized Hearing Represen tative of the determination in accordance with Department policy.
- 3. The Department shall supplement for Claimant was entitled to receive if accordance with Department policy. lost lost benefits (if any) that the otherwise eligib le and qualifie d in
- 4. The Department shall review the Claimant's continued eligibility in accordance with Department policy in July 2013.

Colleen M. Mamelka Administrative Law Judge

For Maura Corrigan, Director Department of Human Services

Colleen M. Mamilka

Date Signed: June 5, 2012

Date Mailed: June 5, 2012

**NOTICE:** Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 ti mely 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 <u>MAY</u> 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

Re consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

#### CMM/cl

cc: