

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-34038
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 9, 2012
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 conducted from Detroit, Michigan on Wednesday, May 9, 2012. The Claimant appeared, along with [REDACTED], and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED].

ISSUE

Whether the Department properly 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 the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking MA-P benefits on November 3, 2011.
2. On January 30, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. The Department notified the Claimant of the MRT determination on February 3, 2011.
4. On February 13, 2011, the Department received the Claimant's written request for hearing.

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5. On March 23, 2012, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to scoliosis, over-active bladder, and tachycardia.
7. The Claimant alleged mental disabling impairment(s) due to mental retardation.
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5’3” in height; and weighed 113 pounds.
9. The Claimant is a high school graduate under a special education program with a work history in a transitional work program under a highly structured environment.
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 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 416.913. 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 416.945(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). 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).

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. Currently, the Claimant is involved in a transitional work program designed to teach an individual basic activities under a job coach scenario. The Claimant's "earnings" fall far below the substantial gainful activity ("SGA") level established by the Social Security Administration. In light of the foregoing, it is found that the Claimant is not involved in SGA and 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 416.920(a)(4)(ii); 20 CFR 416.920(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 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 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 due to scoliosis, tachycardia, over-active bladder, and mental retardation.

In [REDACTED] a Special Education Evaluation Team Report was completed on behalf of the Claimant. The Wechsler Abbreviated Scale of Intelligence ("WAIS") was administered resulting in a full scale IQ of 69. Overall, the scores represented a student who demonstrated significantly reduced academic skills and academic applications indicating the need for special-education support in all academic areas. Academic grades were the equivalent to a 3rd and 4th grade levels.

On [REDACTED] an Individualized Education Program assessment was performed for the purposes of transition practicing adult living skills in the home and in the classroom/community. An articulated goal was to assist in decision-making and problem-solving techniques in workplace situations with the help of a special education teacher and job coach. The Claimant was found to need continued assistance.

On [REDACTED] a Medical Examination Report was completed by a urologist on behalf of the Claimant. The current diagnoses were nocturia and chronic cystitis.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnosis was learning disability.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were cognitive impairment with a full scale IQ of 69, and chronic cystitis.

On [REDACTED] the Claimant attended a mental status examination with IQ testing. The WAIS-IV test was administered. The full scale IQ was 71. The Claimant was found to be functioning at the very low range of borderline intellectual functioning with significant learning impairments affecting her reading recognition and calculations. The Claimant was found able to do simple routine tasks and interact with others in a social or work environment. The diagnoses were learning disability and borderline intellectual functioning. The Global Assessment Functioning ("GAF") was 50 and the prognosis was guarded.

On this same date, the Claimant attended a consultative speech and language evaluation. The Claimant exhibited Articulation, Receptive, and Expressive Language Disorders with an understanding and use of the language below age expectancies. The Oral Composite Score was 64, percentile rank of 1. Listening Comprehension yielded a score of 68, a percentile rank of 2. Oral Expression yielded a score of 65, a percentile rank of 1. The Speech/Language Pathologist found the Claimant's articulation, language understanding, and use of language difficulties would affect her ability to comprehend information; follow multi-step directions; understand and formulate explanations; draw appropriate conclusions from information and/or situations; answer questions completely and cohesively; communicate ideas; be understood; and interact effectively with others at times. The diagnoses were articulation (moderate impairment), receptive language (severe impairment), and expressive language (severe impairment). The prognosis was fair for articulation and poor for language understanding and use. The Pathologist found that participation in speech/language therapy beyond a 12 month period would have minimal effect on prognosis.

The Claimant also attended a consultative physical examination. The diagnosis was overactive bladder.

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 medical evidence establishing that she does have some 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 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 has alleged physical disabling impairments due to scoliosis, tachycardia, over-active bladder, and mental retardation.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree 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 impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree 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.

Listing 12.05 discusses mental retardation which refers to significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period. The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

- A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

- B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

- C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

- D. A valid verbal, performance, or full scale IQ of 60 through 70, 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.


In this case, the Claimant's full scale IQ was 69 and 71. The Oral Composite Score was 64, percentile rank of 1. Listening Comprehension yielded a score of 68, a percentile rank of 2. Oral Expression yielded a score of 65, a percentile rank of 1. The Speech/Language Pathologist found the Claimant's articulation, language understanding, and use of language difficulties would affect her ability to comprehend information; follow multi-step directions; understand and formulate explanations; draw appropriate conclusions from information and/or situations; answer questions completely and cohesively; communicate ideas; be understood; and interact effectively with others at times. The diagnoses were articulation (moderate impairment), receptive language (severe impairment), and expressive language (severe impairment). The prognosis was fair for articulation and poor for language understanding and use. The Pathologist found that participation in speech/language therapy beyond a 12 month period would have minimal effect on prognosis. The Claimant currently works in a structured environment with a job coach. The Claimant also participates in school learning general life skills. There is no evidence that the Claimant is able to function independent of a highly structured environment. In light of the foregoing, it is found the Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment within Listing 12.00, specifically 12.05. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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 3, 2011 application to determine if all other non-medical criteria are met and inform the Claimant and her Authorized Hearing Representative of the determination in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in accordance with department policy in June 2013.



Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 29, 2012

Date Mailed: May 29, 2012

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:

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- 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

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cc:

