

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-35178
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 14, 2012
County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on June 14, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant and her Authorized Hearing Representative, [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

1. On or about January 1, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to on or about September 1, 2012.
2. On February 10, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On February 16, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-four [REDACTED] has a high-school education.

5. Claimant last worked in 2008 as a sales manager at a call center. Claimant also performed relevant work as a floor manager at a call center. Claimant's relevant work history consists exclusively of unskilled light-exertional work activities.
6. Claimant has a history of Major depressive disorder, recurrent, moderate. Her onset date is 2003.
7. Claimant was never hospitalized for Major depressive disorder.
8. Claimant currently suffers from Major depressive disorder, recurrent, moderate.
9. Claimant has severe limitations of her ability to concentrate, interact with others, and follow directions. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the whole record, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

The Administrative Law Judge concludes and determines that Claimant **IS NOT DISABLED** for the following reason (select ONE):

1. Claimant is engaged in substantial gainful activity.

OR

2. Claimant's impairment(s) do not meet the severity and one-year duration requirements.

OR

3. Claimant is capable of performing previous relevant work.

OR

4. Claimant is capable of performing other work.

The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason (select ONE):

1. Claimant's physical and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment: 12.00 Mental Disorders-Adult.

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....
- c. Sleep disturbance; or....
- e. Decreased energy; or....
- g. Difficulty concentrating or thinking; or....
- i. Hallucinations, delusions, or paranoid thinking....

AND

B. Resulting in at least two of the following:

2. Marked difficulties in maintaining social functioning;...

3. Marked difficulties in maintaining concentration, persistence or pace....

20 CFR CH. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Listing 12.04 Affective disorders.

OR

2. Claimant is not capable of performing other work.

The following is an examination of Claimant's eligibility required by the federal Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of Michigan is required to use the five-step Medicare eligibility test in evaluating applicants for the State's Medicaid disability program.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2008. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity. Department Exhibit 1, p. 11.

Second, in order to be eligible for MA, the claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is 2003. Prior to December 2010, Claimant lived in [REDACTED] and received psychiatric treatment there, including the medications Paxil and Klonopin. *Id.*, p. 12.

In December 2010, Claimant moved to Michigan. *Id.*

On [REDACTED] psychiatrist, [REDACTED] diagnosed Claimant with Major depressive disorder, recurrent moderate. He continued her on her current medication, Paxil, and recommended follow-up medication reviews, psychotherapy, psychoeducation and case management services. Claimant sees [REDACTED] every six months, and her most recent appointment was on [REDACTED]. *Id.*, p. 13.

On [REDACTED], Claimant went in for a Medication Management Review. She continued in treatment through [REDACTED], according to the medical records. She continued to use Klonopin and Paxil. She sees [REDACTED] for counseling every month. Her most recent appointment was [REDACTED]. *Id.*, pp. 14, 20.

Based on this information of record, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second MA eligibility requirement.

Turning now to the third requirement for MA eligibility approval, here the factfinder must determine if the claimant's impairment is listed as an impairment in the federal Listing of

Impairments, found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case, it is found and determined that Claimant's impairment meets the definition in Listing 12.04 Affective disorders, and its subparts, sections 12.04A and B. The relevant sections of this Listing are set forth above in full.

Listing 12.04A opens with a description of the term affective disorder as "[c]haracterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome." It is found and determined that Claimant's diagnosis of "Major depressive disorder, recurrent Moderate," falls within the definition of Section 12.04. Claimant has been depressed since [REDACTED] and it has affected her entire psychic life. Department Exhibit 1, pp. 12-13.

Having met the 12.04 definition of affective disorder, it is now necessary to turn to the two subparts, 12.04A and 12.04B, to see if these requirements are also met in this case.

Sec. 12.04A requires that four of nine characteristics of depressive syndrome be present. It is found and determined that Claimant possesses five of the listed characteristics of depressive syndrome, thereby fulfilling the 12.04A requirements.

First, Item a, referring to anhedonia/pervasive loss of interest, is reported in Claimant's medical records as she "doesn't enjoy anything" and isolates herself. Item c, sleep disturbance, is reported in Claimant's medical records as "could not sleep" and "trouble falling asleep." Item e, decreased energy, is reported in the records as "energy level is down." Item g, difficulty concentrating, is reported in the medical records as "unable to focus" and "poor concentration." Fifth, Item i, hallucinations, appears in Claimant's medical records as "hears conversations" and "hallucinations two times a week." *Id.*, pp. 12, 13, 22.

Having fulfilled the requirements of Section 12.04A, it is now necessary to go on to Section 12.04B and meet its requirements. Section 12.04B requires that two of four listed results be present. It is found and determined that results 2 and 3 in Section 12.04B are present in this case. These two result requirements are presented above.

In Section 12.04B, the second possible result required is "marked difficulties in maintaining social functioning." It is found and determined that Claimant's psychiatric status meets this requirement. Claimant's records reflect that she has crying spells, irritability, anxiety, sleep disturbance, and a lack of interest in most activity. *Id.*, pp. 12, 22.

Further, the third possible result requirement is "marked difficulties in maintaining concentration, persistence or pace." It is found and determined that Claimant's behavior demonstrates this behavior. Claimant's records indicate she has poor concentration and is unable to focus. She states she "can't sit still and concentrate." Claimant wrote on a Department questionnaire that. "I don't care about doing nothing. I just like to look out window (*sic*)." *Id.*, p. 17 (front and back sides).

Having reviewed the records and the testimony in this case, it is found and determined that Claimant meets the federal definition of mental disability defined in Listing of Impairment 12.04, Affective disorders. Accordingly, Claimant is eligible to receive MA and SDA benefits based on her mental impairment.

As this finding requires no reference to Claimant's work history and skills, it is not necessary to determine what Claimant's standing is as far as the fourth and fifth steps of the MA eligibility process. Claimant is found eligible at the third step of the MA eligibility test.

In conclusion, based on the Findings of Fact and Conclusions of Law above, the Claimant is found to be

NOT DISABLED DISABLED

for purposes of the MA program. The Department's denial of MA benefits to Claimant is

AFFIRMED REVERSED

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant must also be found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record finds that Claimant

DOES NOT MEET MEETS

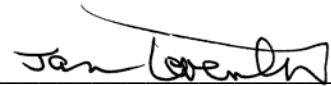
the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the onset date of 2003.

The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate processing of Claimant's application to determine if all nonmedical eligibility criteria for MA and SDA benefits have been met;
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA and SDA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy;
3. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate procedures to schedule a redetermination date for review of Claimant's continued eligibility for program benefits in July 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 18, 2012

Date Mailed: June 19, 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:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

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

JL/pf

cc:

