

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 44687
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 21, 2012
County: Macomb County DHS (12)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on May 21, 2012 from Clinton Township, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED] a witness who appeared on behalf of the Claimant. [REDACTED]

[REDACTED] the Claimant's Authorized Hearing Representative (AHR) also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED] ES.

ISSUE

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

FINDINGS OF FACT

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

1. On November 26, 2011, the Claimant applied for MA-P and retro MA-P to retro to September 2011.
2. On January 3, 2012, the Medical Review Team denied Claimant's request.
3. The Department provided the Claimant a notice of the Notice of Case Action dated January 6, 2012 denying the Claimant's MA-P application. Exhibit 1

4. On March 30, 2012 the Claimant's Authorized Hearing Representative submitted to the Department a timely hearing request. Exhibit 2
5. On April 23, 2012 the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request. Exhibit 3
6. An Interim Order was issued on June 6, 2012 accepting new evidence submitted on the Claimant's behalf at the hearing and ordering additional medical examinations.
7. The new evidence was provided to the State Hearing Review Team (SHRT) on September 10, 2012 and SHRT denied disability on September 28, 2012.
8. Claimant is [REDACTED] years old with a birth date of [REDACTED]
9. Claimant has a GED and completed one year of college. The Claimant is 5'5" tall and weighs 315 pounds. The Claimant has some difficulty with multiplication and division and counting backwards.
10. Claimant has employment experience (last worked 2008). The Claimant was a telemarketer for SBC for three years and was fired due to her anxiety. Claimant worked at McDonald's as a cook. The Claimant obtained her real estate license and worked as an agent for (3 months) and was unable to remember her appointments and left the job. The claimant also worked for a mortgage company as a mortgage originator (3 weeks). The Claimant worked for Hanson's Windows for 3 months as a telemarketer and then worked for OnStar as a telemarketer for 6 months (2007) and was let go for medical reasons. The Claimant last worked in 2007-2008.
11. Claimant alleged physical disabling impairments of pain in legs and extreme pain in muscles, including her joints. The Claimant also alleges headaches at least 15 to 20 per month. The Claimant also has back pain and her legs hurt upon standing any length of time. The Claimant alleges fibromyalgia, Multiple Sclerosis, COPD, diverticulitis, incontinence and seizures during the evening when sleeping and is legally blind in left eye.
12. The Claimant has alleged mental disabling impairments including short term memory loss, the claimant alleged she suffers from anxiety, anger issues, depression, and is bipolar. The Claimant has been diagnosed as having ADHD as a child.
13. The Claimant's medical impairments have lasted or are expected to last for 12 months or more duration.

CONCLUSIONS OF LAW

MA-P is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA-P 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 Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that she is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity

requirement as a “*de minimis* hurdle” in the disability determination. The *de minimis* standard is a provision of a law that allows the court to disregard trifling matters.

The individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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 are 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.*

In this case the Claimant has alleged physical disabling impairments which include pain in legs and extreme pain in muscles, including her joints throughout her body. The Claimant also alleges headaches at least 15 to 20 per month. The Claimant also has back pain and her legs hurt upon standing any length of time. The Claimant alleges fibromyalgia, multiple sclerosis, COPD, diverticulitis, incontinence and seizures during the evening when sleeping and is legally blind in left eye.

The Claimant has also alleged mental disabling impairments of bipolar disorder, anxiety and depression. The Claimant has received treatment for the last two years and attends group psychotherapy weekly and sees a psychiatrist every 3 months.

In this case the medical evidence documents the following:

A DHS 49 Mental Residual Functional Capacity Examination was conducted by the Claimant's treating physician on [REDACTED] and evaluated the Claimant as markedly limited in the following abilities: Sustained Concentration – ability to carry out detailed instructions, ability to maintain attention and concentration for extended periods, ability to sustain an ordinary routine without supervision and the ability to work in coordination with or proximity to others without being distracted by them.

As regards Social Interaction the Claimant was also markedly limited in the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. In Adaptation the Claimant was markedly limited in her ability to travel in unfamiliar places. The Claimant was moderately limited in all the remaining abilities being markedly limited in 6 of 22 categories of the evaluated abilities.

A psychiatric evaluation was done [REDACTED] which gave a diagnosis of Bipolar and personality disorder and anti-social personality disorder. with a GAF score at that time of 51. The exam also noted that the Claimant's speech was unremarkable, perceptions were normal, thought process was noted as rumination, mood was normal, and judgment, impulse control, insight and sleep were all normal.

A consultative Mental Status Exam was conducted on [REDACTED]. At the exam the claimant did not use means of support and was shaking her legs and tapping her fingers and walked with a slow wide paced gait. Her speech was shaky but clear and articulate. The examiner noted that the patient did not appear to be exaggerating her symptoms. Her mood was anxious and self-conscious. The Medical source statement noted that at the time of this exam, the patient's anxiety outside of her home is relatively significant and poorly managed despite medication, it is not likely she would be able to appropriately interact or control her emotions and anxiety to do work-related activities at a sustained pace. Diagnosis was general anxiety disorder with panic attacks. Cognitive disorder, very mild likely secondary to MS and seizure disorder. GAF was 45 to 48.

A neurological exam on [REDACTED] noted that the Claimant had recent seizure activity, cervical degenerative disc disease, and lower extremity paresthesias. The examiner notes that the Claimant stopped her medications a week ago and felt more tired and headaches were worse. The neurological exam noted decreased light touch and pin prick on her right extremities compared to her left and decrease in muscle strength on the right compared to the left which was intact. The impression was multiple sclerosis not receiving active treatment, low back pain, cervical degenerative disc disease, and possible seizure event.

An MRI of the lumbar spine conducted in [REDACTED] noted the following impressions: at the L5-S1 disc level diffuse posterior disc bulging is probably accompanied by a very thin broad based disc herniation extending from the midline posterolaterally to the left. This does not quite produce spinal stenosis and there is mild

to moderate impingement upon the neural foramen bilaterally at this level, slightly more so on the left.

A Medical Examination Report was conducted by the Claimant's primary care physician on September 2, 2011 which noted fatigue and diffuse pains, shortness of breath, diffuse musculoskeletal pains, dizziness, ataxia and depressed mood. The exam noted that the patient was stable and that she could meet her needs in the home. The exam also notes the current diagnosis as multiple sclerosis (recent), COPD, obstructive sleep apnea, hypertension, GERD, fibromyalgia, hyperlipidemia and restless leg syndrome.

A cervical MRI was performed on [REDACTED] which noted straightening of the normal lordotic curvature of the cervical spine suggesting muscle spasm. Very mild degenerative changes are present without evidence of a fracture. No evidence of spinal stenosis, neural foramen are patent, no focal abnormality in the cervical cord, and that except for worsening of the disc disease and small variation at C5-C6, cervical spine unchanged from [REDACTED]

On [REDACTED] an MRI of the brain was taken due to difficulty with gait and falling down. The impression was no evidence of intracranial hemorrhage, mass lesion or apparent acute infarct. Other previously identified lesions remain unchanged and no new lesions detected. Overall appearance of brain is unchanged since [REDACTED]

On September [REDACTED] an MRI of the knee noted mild degenerative changes present with evidence of a tear involving the medial or lateral meniscal cartilage with no abnormal joint effusion.

An MRI of the thoracic spine conducted [REDACTED] was normal with no stenosis or herniation.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

In the present case, Claimant has been diagnosed fibromyalgia, muscle spasm in her cervical spine, nerve impingement in her lumbar spine, multiple sclerosis, and seizures, headaches and night incontinence. The Claimant's mental impairments include diagnosis of bipolar disorder, mood disorder anxiety and depression.

Claimant testified to the following symptoms and abilities: muscle and joint pain throughout her body with extreme burning sensation, headaches 15 to 20 per month, numbness in her hands and legs, incontinence with night seizures, COPD, back pain and knee pain. The Claimant spends between 12 and 16 hours asleep each day due to fatigue and pain. The Claimant does not go out much as she is uncomfortable around

people. The Claimant's testimony was deemed credible by the undersigned and was confirmed by her fiancé who also testified as to the Claimant's abilities and difficulties.

The Claimant also credibly testified to her physical capabilities and that she can stand about 20 minutes and sit about 20 minutes. The Claimant stated that she could walk only 100 feet and could not squat, and could bend only a little at the waist. She has difficulty climbing stairs. The claimant testified that she needed assistance with dressing including her pants, bra and socks. She cannot tie her shoes and cannot touch her toes. Around her home she uses a cane to ambulate. The heaviest weight she can carry is about a quart of milk. It was noted at the hearing by the undersigned that the Claimant stuttered during the hearing, constantly scratched herself in an anxious manner, used a walker and walked with an extremely slow gait and with some difficulty. Several medical exams noted her slow and difficult gait and speech and attributed this symptom to stress due to multiple sclerosis. The Claimant could not recall some history regarding her employment and physical conditions. The Claimant further testified that she stays in her home most of the time.

The following listings were reviewed in light of the testimony and medical records including 12.04 Affective Disorders, A and B.; 12.06 (1)Anxiety; and 1.04 Disorders of the Spine (C).

In his case, the objective evidence confirms various problems noted on MRIs of the Claimant's knee tear, nerve impingement in the lumbar spine and pain and tenderness in Claimant's body and joints consistent with fibromyalgia and multiple sclerosis. The Claimant also has numbness and tingling throughout her lower extremities. The Claimant's obesity is also documented which can reasonably be inferred to create additional pain in the knee and back and affect her physical abilities, including walking. The Claimant continues to have difficulties ambulating requiring a cane at home and a walker when outside the home and has fallen on several occasions due to her ankle giving out. As regards her mental impairments the medical records demonstrate memory impairment and difficulties in performing activities of daily living, social functioning, and in maintaining concentration, persistence, and pace. Ultimately, it is found that the combination of the Claimant's physical and mental impairments meet, or are the medical equivalent thereof, a Listed impairment within Listings 1.00 and 12.00, specifically 1.04, 12.02 and 12.04, as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

Ultimately, it is found that the Claimant's impairment(s) does meet the intent and severity requirement of the medical equivalent of a listed impairment(s); therefore, the Claimant is found disabled at Step 3 of the analysis.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of September 2010.

Accordingly, the Department's decision is hereby REVERSED

1. The Department is ORDERED to initiate a review of the application dated November 26, 2011, and the Claimant's retro application (September 2011) if not done previously, to determine Claimant's non-medical eligibility.
2. A review by the Department of the Claimant's continuing eligibility shall be set for October 2013.



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

Date Signed: October 29, 2012

Date Mailed: October 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:
 - 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

2012-42166/LMF

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cc:

