

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-57294
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 20, 2012
County: Wayne (82-18)

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 August 20, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant. [REDACTED]

[REDACTED] was present for moral and emotional support purposes only and did not represent Claimant, nor did she testify on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED]
[REDACTED]

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) program?

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 December 8, 2010, Claimant filed an application for MA benefits. The application requested MA retroactive to September 1, 2010.
2. On May 24, 2012, the Department sent a Notice of Case Action to Claimant, denying her application.
3. On June 6, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age twenty-six, [REDACTED] has an eighth-grade education.

5. Claimant last worked in 2005 full time as a zoner at [REDACTED]. In this position, she painted clothing racks and fixed clothes on the racks for sale. Claimant also performed relevant full-time work as a [REDACTED] cashier and store closer. Claimant currently works twelve hours a week as a clerk's assistant at [REDACTED]. Claimant's relevant work history consists exclusively of unskilled, light-exertional work activities.
6. Claimant has a history of bipolar disorder, left knee problems, lower back problems, and sleep apnea. Her onset date is [REDACTED].
7. Claimant was hospitalized in 2006 as a result of a suicide attempt. The discharge diagnosis was post-attempted suicide.
8. Claimant currently suffers from bipolar disorder, left knee problems, lower/middle back problems and sleep apnea.
9. Claimant has severe limitations of her ability to remember and carry out detailed instructions, perform activities within a schedule, maintain regular attendance and punctuality, complete a normal workday, travel, and set goals and make plans independently of others. 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 that is available in significant numbers in the national economy.

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(s):

12.04 Affective disorders.

C. Medically documented history of a 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:

1. Repeated episodes of decompensation, each of extended duration; ...

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

OR

2. Claimant is not capable of performing other work that is available in significant numbers in the national economy.

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 Social Security Administration's five-step eligibility test in evaluating applicants for Michigan's Medicaid disability program.

First, the claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked full time since 2005. Accordingly, it is found and determined that Claimant is not engaged in substantial gainful activity, and the first requirement of eligibility is fulfilled. Department Exhibit 1, p. 12.

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 [REDACTED]. [REDACTED] Claimant attempted suicide and was hospitalized for a week. The diagnosis was bipolar disorder. Also [REDACTED], Claimant went to jail for seventy-two days and was temporarily placed in a psychiatric section of another jail because she was hearing voices. [REDACTED], Claimant was diagnosed with bipolar disorder and lived for a year in a residential group home for adults with mental disorders.

Claimant is currently treating with a psychiatrist and therapist at [REDACTED]. She has treated there for over two years. Her diagnosis is bipolar disorder. Currently, she takes four medications: Xanax, Seroquel, Abilify and Lamictal. *Id.*, p. 16.

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 eligibility requirement.

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if 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 subpart, section 12.04C. The relevant portion of this Listing is set forth above. The reasons for this finding are set forth below.

Listing 12.04C presents a series of requirements that must be met in order to qualify for MA benefits based solely on a mental impairment. The first is that there must be a two-year documented history of a chronic affective disorder. The case record contains treatment records of more than two years' treatment for a chronic affective disorder. It is found and determined that these records fulfill the requirement for a documented history. *Id.*, pp. 19a-33; see *also*, pp. 15-19.

Next, the second requirement of Listing 12.04C is that the disorder must have caused more than a minimal limitation of the ability to do basic work activities. Claimant's psychiatrist reported that Claimant is markedly limited in the ability to understand and remember detailed instructions, the ability to carry out detailed instructions, the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, the ability to complete a normal workday and worksheet without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, the ability to travel in unfamiliar places or use public transportation, and the ability to set realistic goals or make plans independently of others.

Claimant's psychiatrist also indicates that Claimant is moderately limited in the ability to remember locations and work-like procedures, the ability to maintain attention and

concentration for extended periods, the ability to sustain an ordinary routine without supervision, the ability to work in coordination with or proximity to others without being distracted by them, the ability to make simple work-related decisions, the ability to interact appropriately with the general public, the ability to accept instructions and respond appropriately to criticism from supervisors, the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, the ability to respond appropriately to change in the work setting, and the ability to be aware of normal hazards and take appropriate precautions. Claimant's psychiatrist found that, in eighteen of twenty categories, Claimant had moderately or markedly limited ability. There are only two categories where he found she was not significantly limited: the ability to understand and remember one or two-step instructions and the ability to carry out one or two-step instructions. *Id.*, pp. 18-19.

In addition, Claimant's written responses to Department questionnaires and her sworn testimony are consistent with the information in her medical records. Based on all of the evidence in this case taken as a whole, it is found and determined that Claimant has established that her chronic affective disorder causes more than a minimal limitation of the ability to perform basic work activities.

Turning now to the third requirement of Listing 12.04C, the Claimant must have symptoms or signs that are currently attenuated by medication or psychosocial support. The evidence of record indicates that Claimant is currently treating with a psychiatrist and a therapist, and that she takes four medications. Her symptoms include hearing voices, feelings of worthlessness, anxiety, sleep apnea, depression, lack of motivation, fear of others, impatience with people, mood swings, and crying spells. Claimant's responses to Department questionnaires, and her hearing testimony, corroborate the information in the medical records. *Id.*, pp. 15-33.

Therefore, based on all of the evidence taken as a whole, it is found and determined that Claimant has established that she has symptoms and signs currently attenuated by medication and psychosocial support. This fulfills the third portion of Listing 12.04C.

The fourth and last requirement in Listing 12.04C is that the claimant present one of three features: repeated episodes of decompensation, each of extended duration, a residual disease process that has resulted in marginal adjustment, or a current history of one or more years' inability to function outside a highly supportive living arrangement. It is found and determined, after a review of all of the evidence in the record, that the first of these is present in this case. Claimant has had repeated episodes of decompensation. Claimant attempted suicide in [REDACTED] and was hospitalized for a week; while serving a jail sentence [REDACTED], she was sent to a psychiatric jail section, and treated with a psychiatrist who prescribed Risperdal for her; and, Claimant lived in a residential home for adults with mental impairments for a one-year period. Based on this information, it is found and determined that Claimant's history is one of repeated episodes of decompensation, which fulfills the fourth and last portion of Listing 12.04C.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 12.04C, chronic affective disorder. Claimant therefore has established eligibility for Medicaid based on her mental impairment.

As Claimant is found by the undersigned to be eligible for MA based solely on a mental impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence.

Further, 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, if she should choose to apply for them.

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 program as of the onset date of 2006.

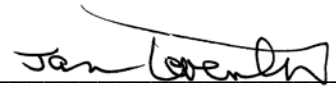
The Department's decision is

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 December 8, 2010, application, to determine if all nonmedical eligibility criteria for MA 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 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 October 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: August 28, 2012

Date Mailed: August 28, 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:

