

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

IN THE MATTER OF:



Reg. No.: 2012-16186
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: March 8, 2012
County: Muskegon County

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on March 8, 2012. Claimant, represented by [REDACTED], personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On April 24, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA, and State Disability Assistance (SDA)?

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 July 14, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On September 9, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration. (Department Exhibit A, p 100).

- (3) On October 6, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On October 21, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On February 9, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light unskilled work and denied her disability application based on Medical Vocational Rule 202.20. (Department Exhibit B, pp 1-2).
- (6) On April 24, 2012, the SHRT found Claimant was not disabled because the medical evidence of record indicated that Claimant retained the capacity to perform a wide range of simple, unskilled, sedentary work, and denied her application based on Medical Vocational Rule 201.28. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of chronic pain syndrome, attention deficit hyperactive disorder (ADHD), borderline personality, arthritis, fibromyalgia, degeneration of lumbar or lumbosacral intervertebral disc, and asthma.
- (8) On June 30, 2010, Claimant underwent a psychological evaluation on behalf of the department. Claimant complained of having pain throughout her body with arthritis and ruptured discs. She has not had surgery, but she complained of having daily and constant pain so that she has to use a cane to walk. She complained of having problems with her memory and concentration. She complained of being depressed most of her life because of a bad childhood, but also because her children were removed in 2003 and adopted out. She has a history of suicidal thoughts as well as multiple suicide attempts. She complained that she has been cutting on herself since 2003. She complained of having panic attacks, and she has a history of abusing marijuana and crack cocaine up until August of 2009. The Mental Residual Functional Capacity Assessment under Understanding and Memory showed Claimant was markedly limited in her ability to understand and remember detailed instructions. Under Sustained Concentration and Persistence, Claimant was found to be moderately to markedly limited in her ability to carry out detail instructions; moderately limited in her ability to maintain attention and concentration for extended periods and to work in coordination with or proximity to others without being distracted by them; and markedly limited in her ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, and 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. Under Social Interaction, Claimant was found to be

moderately limited in her ability to accept instructions and respond appropriately to criticism from supervisors and to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. Diagnoses: Axis I: Bipolar Disorder, Panic Disorder without Agoraphobia, Psychological factors affecting physical condition, history of drug abuse in short-term remission; Axis II: Borderline Personality Disorder; Axis III: Complaints of Chronic Pain; Axis IV: Severity of Psychosocial Stressors-moderate; Axis V: GAF= 50-55. Prognosis: The potential for Claimant becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded pending medical resolution. (Department Exhibit A, pp 430-436).

- (9) On January 19, 2011, Claimant saw her therapist at [REDACTED] ([REDACTED]). She stated that she does not feel like she is doing well. She has been forgetful for the last three weeks, seeing shadows of animals or people, that aren't there. She has had thoughts of wanting to cut, but has not acted on them. The note from her case manager verifies what she is saying. Her mood is down. She actually becomes tearful and cries. Trying to get out of her what may have changed lately, and she has been very depressed actually. Some new stressors in her life related to her children which have brought her down. She is endorsing visual hallucinations and poor concentration. (Department Exhibit A, pp 56-57).
- (10) On February 14, 2011, Claimant saw her physician for a recheck of chronic pain. She stated she had fallen three times in the past week because her left knee "just goes out." She had bilateral trace edema. She appeared to be in pain, grimacing with guarded movements. She was anxious and depressed. Her gait was slow and cautious. Claimant reported all her movements were painful and she had generalized muscle tenderness. (Department Exhibit A, pp 83-84).
- (11) On April 26, 2011, Claimant saw her therapist at [REDACTED] for a medication review. She did verbalize that she has some suicidal thoughts, but no plan and she stated she will not go through with the suicide. She does acknowledge that if the thoughts get worse, she will contact a family member or she will go to the emergency room. She also admits that she has some thoughts of self-harm. She has a history of cutting. She stated that she has not cut in about three months. She arrived early and was cooperative but quite sad. She teared up several times during the appointment. Her affect was flat. Her mood was dysphoric. Her speech was slightly slow, but normal intonation. Grooming and hygiene were fair. She did smell of smoke. She acknowledged problems with mood swings, racing thoughts, anxiety, and visual hallucinations. She also acknowledged suicidal thoughts but no plan. (Department Exhibit A, pp 66-67).

- (12) On June 17, 2011, Claimant saw her physician for back and bilateral leg pain. Claimant was seeking a referral back to the orthopedic surgeon regarding her chronic low back pain with disc herniation according to a MRI dated 11/19/09. She has moderate L5-S1 spondylosis with right paracentral disc herniation and significant right L5 foraminal lateral stenosis. He required that she stop smoking, which she did yesterday. She has ongoing left leg pain with numbness and tingling down the left leg. The examining physician noted Claimant was in pain, shown by her grimacing and slow, guarded movements. Gait was slow and cautious. She was anxious and depressed. (Department Exhibit A, pp 86-87).
- (13) On June 30, 2011, Claimant was seen by her orthopedist. Claimant quit smoking and needs surgical intervention. She continues to have severe low back pain going down to the left lower extremity and sometimes going down to the right lower extremity. She had an MRI done in November 2009, which showed complete collapse of the disc space at L5-S1, Mobic changes Grade II of the L5 and S1 body. She has an extruded disc at L5-S1 with narrowing of the neural foramina. She does have a minimal bulge at L4-L5 but not as bad as L5-S1. MRI again showed moderate L5-S1 spondylosis with superimposed, very profound right central disc herniation. There is also significant right L5 foraminal and lateral recess stenosis and less prominent L5 foraminal stenosis. She also has early degenerative changes of the remainder of the lumbar spine. (Department Exhibit A, p 73).
- (14) On July 29, 2011, Claimant met with a new therapist at [REDACTED] for a medication review. She stated that her mood was fairly stable and she has not had any recent suicidal thoughts. She has thoughts of self-harm, but her last incident of cutting was about 3 weeks ago. She was polite and cooperative, but her mood seemed dysthymic. Her affect was flat. Speech was not spontaneous but she did answer questions appropriately. She acknowledged problems with sadness and self-injurious behavior but denied insomnia, mood swings, racing thoughts, paranoia, hallucinations, delusions and energy level. (Department Exhibit A, pp 75-76).
- (15) On August 30, 2011, Claimant underwent a psychiatric evaluation by the Disability Determination Service. Claimant's affect was flat throughout the examination. She demonstrated psychomotor retardation. Claimant does describe her pain as a 7 on a scale of 0-10 with 10 being the worse pain requiring emergency room treatment. Diagnoses: Axis I: Polysubstance Dependence (remission unknown); Axis II: Personality Disorder; Axis IV: Psychosocial Stressors: occupational problems, economic problems and problems with primary support system. GAF: 51-55. Prognosis: Guarded. The psychiatrist opined that Claimant would be unable to manager her own benefit funds. Based upon the examination, Claimant is able to understand, retain, and follow simple instructions. However, the

pressure of returning to a structured repetitive type work environment may lead to further decompensation. Claimant's prognosis may improve with sobriety, continued psychiatric review of her medications, and a return to Dialectal Behavioral Therapy (DBT). (Department Exhibit B, pp 3-7).

- (16) On October 21, 2011, Claimant saw her therapist at [REDACTED]. Claimant was polite and cooperative, but did appear rather dysphoric. Her demeanor was sad. She teared up a couple of times. Her affect was flat. She acknowledged excessive sadness. Claimant's dose of Wellbutrin XL was increased from 150 mg to 300 mg, and she was to remain on Cogentin, Clonopin, Prozac, Lithium, BuSpar, Abilify, Strattera, and Lunesta. Diagnoses: Axis I: Mood Disorder, Obsessive-Compulsive Disorder, ADHD, Nicotine Dependence, Polysubstance Dependence in remission; Axis II: Borderline Personality; Axis III: Fibromyalgia, Hyperlipidemia, Osteoarthritis, Asthma, Chronic Back Pain; Axis IV: Primary support, finances, housing; Axis V: GAF=48. (Department Exhibit A, pp 78-79).
- (17) On December 19, 2011, Claimant saw her doctor for pain management. She is a high to moderate risk in pain management due to her history of cocaine use. Claimant's MRI of her lumbar spine showed herniation of the disc with an extruded fragment extending posteriorly and inferiorly down the spinal canal. She complained of back pain, back ache, decreased range of motion, joint pain, joint stiffness, low back pain, muscle pain, and swelling of extremities. Psychiatrically, she displayed anger, anxiety, denial, depression, irritability, and worrying. Claimant appeared to be in pain. Grimacing and guarded movements. Her gait was slow and cautious. She had trace edema and generalized muscle tenderness. (Department Exhibit C, pp 3-5).
- (18) On January 13, 2012, Claimant saw her therapist for a medication review. Claimant reported that her anxiety was terrible. She was still frustrated with issues with her children. She had a very somber look on her face and appeared irritable the entire appointment. Grooming and hygiene were fair. Eye contact was poor, as she did not look the therapist in the eye much. Mood was irritable. Affect was broad. She acknowledged issues with anxiety, and poor memory. (Claimant Exhibit A, pp 8-9).
- (19) On March 2, 2012, Claimant saw her therapist at [REDACTED] for a medication review. Claimant stated that her memory problems were getting progressively worse and over the last three weeks she had noticed a huge decline in her mental clarity. She gets lost when she is driving, forgets what she is saying mid-sentence, forgets dates and appointments, and even forgot about her disability court hearing last month. She acknowledged feeling depressed and anxious and has no motivation to do anything and acknowledges some thoughts of self-harm, but denies being suicidal or homicidal. She has a history of cutting, but denies any recent

urges to cut. Claimant was polite and cooperative, but as usual appeared quite dysphoric. She did not smile at all throughout the appointment. Her speech was soft with normal intonation. (Claimant Exhibit A, pp 17-18).

- (20) Claimant is a 42 year old woman whose birthday is [REDACTED]. Claimant is 5'9" tall and weighs 220 lbs. Claimant completed the ninth grade.
- (21) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program 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 Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. 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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 to make appropriate mental adjustments, if a mental disability is

being 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 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #7-#19 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, her mental impairments meet or equal Listing 12.04(A) and 12.04(B):

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
- 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 distractibility; or
- g. Involvement in activities that have a high probability 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 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;

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her July 14, 2011, MA/Retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's July 14, 2011, MA/Retro-MA and SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in May, 2014, unless her Social Security Administration disability status is approved by that time.
3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 5/8/12

Date Mailed: 5/8/12

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

VLA/ds

cc:

