

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201224114  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: March 5, 2012  
Macomb County DHS

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 held on March 5, 2012. The claimant appeared and testified; Andre Turner Moore testified and appeared as Claimant's authorized hearing representative (AHR). On behalf of Department of Human Services (DHS), [REDACTED], [REDACTED]r, Specialist, and [REDACTED], Manager, appeared and testified.

**ISSUE**

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

**FINDINGS OF FACT**

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

1. On 10/13/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 12/22/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).
4. On 12/29/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 1/4/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 2/15/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 94-95), in part, by application of Medical-Vocational Rule 204.00.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female ([REDACTED]) with a height of 5'3" and weight of 220 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or drug abuse.
9. Claimant's highest education year completed was the 12<sup>th</sup> grade through obtainment of a general equivalency degree.
10. As of the date of the administrative hearing, Claimant had no health insurance coverage, and has not had medical coverage since approximately 6/2010.
11. Claimant alleged that she is disabled based on impairments and issues including lower back pain, panic attacks, paranoia, asthma and depression.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (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 controlling DHS regulations are those that were in effect as of 6/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related

categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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 413.913. An individual's subjective pain complaints

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are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2011 monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F2d 860, 862 (6<sup>th</sup> Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe

impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1<sup>st</sup> Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1<sup>st</sup> Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

A Medical Social Questionnaire (Exhibits 75-78) was presented. Claimant did not date the form but a DHS receipt date of 11/28/11 was stamped on the form. The form is intended to be completed by clients for general information about their claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant listed impairments of: major depression, anxiety, panic attacks, LBP and asthma. Claimant noted that she is uncomfortable around others, cannot concentrate, irritable and impatient. Claimant listed a 5/2010 hospitalization for a gallbladder removal and a 6/2009 hospitalization for a hysterectomy.

An internal medicine examination report (Exhibits 53-70) dated [REDACTED] was presented by a SSA assigned physician. It was noted that Claimant reported experiencing lower back pain since 2010 after shoveling snow. Claimant's gait was noted as stable without a walking device. Claimant's range of motion was noted as full. Views were taken of Claimant's lumbosacral spine. An impression of mild levoscoliosis and mild degenerative changes in the spine were provided. Claimant also reported a history of asthma. She noted that she had not used an inhaler since 2009. An impression was given that Claimant has LBP and asthma. Claimant noted that a breathing test was performed on [REDACTED] (see Exhibit 76) but the test results were not presented.

Claimant testified that she has a 1-2 block walking restriction. Claimant stated that lower back pain and shortness of breath prevent her from walking further. Claimant testified that she can stand for 10-20 minutes before needing to sit for similar reasons to her walking restrictions. Claimant stated her gripping and grasping were not restricted but that she is capable of lifting only approximately 5 pound weights. Claimant stated she can sit for 2-3 hour periods but would need 20 minute breaks.

Claimant's complaints of LBP and shortness of breath were verified by the medical records. The medical records did not note any specific restrictions on Claimant's physical abilities. It is known that Claimant was diagnosed with levoscoliosis, degenerative spinal changes and asthma. The diagnoses are supportive of finding that Claimant has physical impairments, but not necessarily to the extent described by Claimant.

Claimant had a full range of motion in all tested joints. The levoscoliosis and degenerative changes were described as mild. Claimant had no need for a walking device. Claimant was able to get on and off the examination table during the physical examination. Claimant was able to perform all tested walks included on toes and heels. Though Claimant has impairments that suggest that she suffers physical restrictions, other medical evidence tended to establish that Claimant is not physically restricted in the performance of basic work activities.

A Psychiatric Evaluation (Exhibits 13-21) dated [REDACTED] was presented. It was noted that Claimant reported a history of depression and sexual abuse from her childhood. It was noted that Claimant reported experiencing panic attacks. It was noted that Claimant reported paranoid thoughts and obsessive behaviors such as cleaning in the dark. Claimant reported one prior suicide attempt in her teens. Claimant reported her last suicidal ideation was in 2001. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4<sup>th</sup> edition) (DSM IV). Axis I represents the acute symptoms that need treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale.

Axis I diagnoses included major depressive disorder, recurrent, severe without psychotic features, panic disorder without agoraphobia, obsessive-compulsive disorder (OCD) and post-traumatic stress disorder (PTSD). The Axis II diagnosis was deferred. Axis III noted obesity. Axis IV noted Claimant's history of physical and sexual abuse, unemployment, economic problems and problems with primary support group. Claimant's GAF was 50. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

A Psychiatric/Psychological Examination Report (Exhibits 79-82) dated [REDACTED] was presented from Claimant's treating physician. It was noted that the treating physician first examined Claimant on [REDACTED] and last treated Claimant on [REDACTED]. The report repeated many items from the evaluation of [REDACTED]. Claimant's prescriptions of

Celexa, Amitriptyline and Benadryl were noted. It was also noted that Claimant requires annual psychiatric evaluations, weekly therapy sessions and monthly medication reviews. It was noted that Claimant stays in bed without tending to hygiene for days. Body dysmorphic was noted though it was not part of the diagnoses.

A Mental Residual Functional Capacity Assessment dated [REDACTED] was completed by Claimant's treating physician. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Claimant was found markedly limited in sixteen areas, including all five listed areas of social interaction. It was noted that Claimant's mental illness was chronic and pervasive.

The marked restrictions in social interaction included in Claimant's dealing with the public. This was consistent with other evidence, which found that Claimant tended to prefer isolation. Claimant's OCD behaviors such as obsessive hand washing, cleaning and counting was consistent with a finding that Claimant was markedly restricted in exhibiting normal workplace behavior. Claimant's depression and negligence in hygiene is consistent with a marked restriction of exhibiting basic standards of neatness. Claimant's social interaction restrictions are found to be a significant impairment to the performance of basic work activities.

Medical records support finding that Claimant suffered psychological impairments for much of her life, but the symptoms worsened in the past few years. It is found that Claimant's impairments have lasted for more than 12 months. Accordingly, it is found that Claimant suffers a severe impairment and the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

The impairment for which Claimant most persuasively established was for depression. The listing for depression is covered by affective disorders and reads:

**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

OR

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; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Looking at Part A of the above listing, Claimant's testimony and medical records each referenced several depression symptoms. Claimant's difficulty with concentration and thinking was well established. Claimant's OCD was a significant distraction for her. Claimant was only able to recall one of three objects after five minutes while a second was recalled with a clue (see Exhibit 17) and was markedly limited in numerous areas involving concentration. Paranoia was also established in her social interactions and avoidance of social interactions. Claimant noted a weight gain of 18 pounds over 11 months due to increased eating (see Exhibit 88); medical records did not note a weight gain but noted Claimant's and goals of weight loss (see Exhibit 27). Feelings of guilt and worthlessness were established by Claimant's preoccupation with body dysmorphic disorder. Claimant noted she hates the way she looks and "feels like a failure" (see Exhibit 87). It is found that four affective disorders were established.

Looking at Part B, there was ample evidence of marked difficulties in maintaining social functioning. Claimant's treating physician noted Claimant was markedly limited in all six listed abilities on the MRFCA (see Exhibits 83-84). The abilities which Claimant was markedly limited included: interacting with the public, asking simple questions or requesting assistance, accepting instructions and responding appropriately to criticism, getting along with co-workers without distracting them or exhibiting behavioral extremes and maintaining socially appropriate behavior. These conclusions were consistent with Claimant's testimony and other medical records. It was established that Claimant has marked difficulties with maintaining social interactions.

There was also ample evidence of marked difficulties in maintaining concentration, persistence, or pace. The MRFCA noted Claimant was markedly limited in the following areas: carrying out detailed instructions, maintaining attention and concentration for extended periods, sustaining an ordinary routine without supervision, working in coordination with others without distraction, performing activities within a schedule while maintaining regular attendance and completing a normal workday without interruptions from symptoms. Claimant was only "moderately limited" in performing the abilities of carrying out simple instructions and making simple work related decisions. These conclusions were consistent with Claimant's testimony and other medical records. It

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was established that Claimant has marked difficulties with maintaining social interactions.


As Claimant established meeting the SSA listing for affective disorders, it is found that Claimant is a disabled individual. Accordingly, it is found that DHS erred in denying Claimant's application for MA benefits.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 10/13/11;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA benefits, to schedule a review of benefits in one year from the date of this administrative decision.

The actions taken by DHS are REVERSED.

  
Christian Gardocki  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: March 22, 2012

Date Mailed: March 22, 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.

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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 to:

Michigan Administrative hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

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cc:

