

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-49008
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 11, 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 July 11, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) 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 5, 2011, Claimant filed an application for MA benefits. The application also requested MA retroactive to September 1, 2011.
2. On April 20, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 25, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-three [REDACTED] has high-school diploma and one year of college.

5. Claimant last worked in 2011 as a waitress. She also has relevant work experience as a dishwasher, pastry decorator and home health care aide. Claimant's relevant work history consists exclusively of unskilled, medium and heavy-exertional work activities.
6. Claimant has a history of bipolar disorder, polysubstance dependence, degenerative joint disease, arthritis, bilateral foot pain, chronic obstructive pulmonary disease, bronchitis, hypertension, Hepatitis C, attention deficit disorder, depression, anxiety, post-traumatic stress disorder, and fibroid tumors. Her onset date is [REDACTED]).
7. Claimant was hospitalized in [REDACTED] as a result of her mental impairment. The discharge diagnosis was acute major depressive episode with suicidal ideation [REDACTED]. She was in residential treatment in [REDACTED]. In [REDACTED], she visited the Emergency Room four times.
8. Claimant currently suffers from bipolar disorder, polysubstance dependence, degenerative joint disease, arthritis, bilateral foot pain, chronic obstructive pulmonary disease, bronchitis, hypertension, Hepatitis C, attention deficit disorder, depression, anxiety, post-traumatic stress disorder, and fibroid tumors.
9. Claimant has severe limitation of her ability to concentrate, she has memory loss, and she has limitation of her ability to stand and bend. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the whole record, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

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

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

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

1. Claimant is engaged in substantial gainful activity.

OR

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

OR

3. Claimant is capable of performing previous relevant work.

OR

4. Claimant is capable of performing other work.

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

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

State the Listing of Impairment:

12.04(C) 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; 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.

20 CFR, Appendix 1, Subpart P, Part 404, Part A, Listing 12.04C.

OR

2. Claimant is not capable of performing other work.

The following is an examination of Claimant's eligibility required by the federal Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of

Michigan is required to use the federal Medicare five-step eligibility test in evaluating applicants for the State's Medicaid disability program.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since January, 2011. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not engaged in substantial gainful activity. Department Exhibit 1, p. 42.

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date for bipolar disorder is [REDACTED]. Claimant received Supplemental Security Income (SSI) benefits from 2000-2007, and was disqualified for reasons other than disability. *Id.*, pp. 11-12.

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 the claimant's impairment is listed as an impairment in the federal Listing of Impairments, found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case, it is found and determined that Claimant's impairment meets the definition found in Listing 12.04, Affective disorders, and its subpart, section 12.04C. This Listing is set forth above in full.

Listing 12.04C begins with the requirement that there be a medically documented history of a chronic affective disorder of at least two years duration. Claimant visited the Emergency Department four times in [REDACTED]. Claimant was hospitalized twice in [REDACTED] for psychiatric treatment, and again in [REDACTED]. In [REDACTED], Claimant was a resident inpatient in a substance abuse treatment facility. Listing of Impairment 12.04C, above; Department Exhibit 1, pp. 43-79, 101.

Claimant also presented the records of [REDACTED]. Claimant treated with [REDACTED] from [REDACTED], a period of five months based on the records provided. It appears that she continued treating with [REDACTED] until at least [REDACTED]. *Id.*, pp. 7, 12-39.

Based on all of the above information, it is found and determined that Claimant has a medically documented history of a chronic affective disorder of at least two years duration. She was diagnosed in [REDACTED], and had two hospitalizations for psychiatric treatment at that time. She received SSI from [REDACTED]. She was in residential treatment in [REDACTED] for substance abuse. She was under the care of a psychiatrist from at least [REDACTED]. This history supports a conclusion that Claimant has a medically documented history of a chronic affective disorder of at least two years duration.

Secondly, the next part of Listing 12.04C is that the impairment must have caused more than a minimal limitation of ability to do basic work activities. Claimant answered the Department's question as to why she lost her job as a waitress, writing that she had "bad feet, could not keep up, lack of concentration, forgetful." She also stated she dropped out of college after a year because she couldn't concentrate. With regard to activities of daily living, Claimant wrote that she has insomnia, her panic and anxiety are increasing, and she cannot keep track of appointments. She cannot walk, stand, sit and squat for long periods of time because of spinal injuries, arthritis in her knees and bad feet. *Id.*, pp. 42, 85-89.

Claimant testified in regard to her mental functional abilities in the areas of understanding, memory, sustained concentration, persistence, social interaction and adaptation. She testified that she is adaptable to change, capable of setting goals, and she is able to set goals and make plans. She testified she felt she is able to work on a schedule and maintain regular time and attendance. She testified she is moderately limited in her ability to carry out two-step instructions.

Further, Claimant testified she is markedly limited in these areas: remembering locations, remembering work-like procedures, understanding and remembering detailed instructions, maintaining attention and concentration for extended periods, sustaining a work routine without supervision, working in coordination with others without being distracted by them, and in making simple work-related decisions. She also stated she was markedly limited in her ability to accept instructions, respond appropriately to criticism from supervisors, get along with co-workers without distracting them or exhibiting behavioral extremes, and to travel in unfamiliar places or use public transportation.

Based on the above testimony and all of the record evidence, it is found and determined that Claimant's impairment has caused more than a minimal limitation of her ability to perform basic work activities.

Also, Claimant testified in regard to certain mental abilities that her bipolar disorder would cause her to be markedly limited on days when she was manic, but she would be fine on the other days. These mental abilities are 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 interact appropriately with the general public, and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.

Third, Listing 12.04C requires a showing of symptoms or signs currently attenuated by medication or psychosocial support. Claimant's symptoms include anxiety, numerous suicide attempts, high-risk behavior (polysubstance abuse), racing thoughts, depression, and anxiety. She used Depakote, Lithium and Tegretol, but cannot afford them without insurance. Her psychiatrist assessed impaired judgment and insight,

decrease in energy and motivation, hopelessness, low self-worth, elevated moods, insomnia, hyperactivity and racing thoughts. *Id.*, pp. 18, 20, 22.

Based on all of the above information, it is found and concluded that Claimant meets the third description in Listing 12.04C.

Next, it must be considered whether Claimant has repeated episodes of decompensation, a residual disease process, or an inability to function outside a highly supportive living environment. These three terms are set forth in full in Listing 12.04C above. One of these features must be present in order to qualify for MA. In this case, it is found and determined that Claimant has had repeated episodes of decompensation, each of extended duration, as described in Listing 12.04C above. The Listing 12.00 definition applies to all of the mental disorders in the 12.00 Listing series. Listing 12.00-Mental Disorders-Adult, p. 6.

Claimant's history is that she had two psychiatric hospitalizations in [REDACTED] when she was first diagnosed with bipolar disorder. She had resident inpatient substance abuse treatment in [REDACTED] and she characterizes her polysubstance abuse as self-medication. She went to the Emergency Department four times in [REDACTED], and was admitted for one night on each occasion.

While this treatment history does not meet the exact requirements of 12.04C3 (three hospitalizations, or other comparable treatment, in one year, each two weeks in length), it is found and determined that Claimant's history reflects the equivalent of the listing in terms of its duration and functional effects. The duration of Claimant's illness has been at least twenty years; but, as [REDACTED] was the year she was diagnosed with bipolar disorder, she would have had it before then as well. With regard to functional effects, bipolar disorder caused a lack of concentration, which caused her to abandon her college education. In all probability, it caused her to become involved in high-risk behavior such as substance abuse with adverse legal consequences. Her lack of focus and concentration led to the loss of at least one job, the last waitressing job. It is found and determined that these functional effects are the equivalent of the severity of impairment intended by the term "repeated episodes of decompensation." It is, therefore, found and determined that the last item of the 12.04C requirements has been met in this case.

Therefore, based on all of the evidence and testimony in this case taken as a whole, it is found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 12.04C, Affective disorders. Claimant, therefore, has established eligibility for Medicaid based on her 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.

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

NOT DISABLED DISABLED

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

AFFIRMED REVERSED

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant must also be found disabled for purposes of SDA benefits, if she chooses 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 programs as of the onset date of 1992.

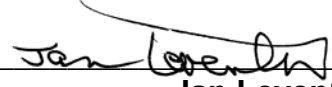
The Department's decision is

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 5, 2011, application to determine if all nonmedical eligibility criteria for MA and retroactive 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 and retroactive 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 August 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: July 17, 2012

Date Mailed: July 17, 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

JL/pf

cc:

