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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 2012-61477
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: October 30, 2012
County: Kalamazoo

**ADMINISTRATIVE LAW JUDGE**: Vicki L. Armstrong

## HEARING DECISION

This matter is before the undersigned Ad ministrative Law Judge upon Claimant's request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which govern the administrativ e hearing and appeal process. After due not ice, an in-person hearing was commenced on Oc tober 30, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [redacted] [redacted]

During the hearing, Claimant wa ived the time period for the issuance of this decision in order to allow for the submission of addi tional medic al evidenc e. The new evidenc e was forwarded to the State Hearing Review Team ("SHRT") for consideration. On December 21, 2012, t he SHRT found Claimant was not disab led. This matter is now before the undersigned for a final decision.

## ISSUE

Whether the Department of Human Serv ices (the department) properly denied Claimant's app lication for Medical Assistance (MA), Retro-MA and State Disabilit y Assistance (SDA)?

## FINDINGS OF FACT

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

(1) On April 4, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.

(2) On June 4, 2012, the Medical Revi ew Team (MRT) denied Claimant's application for MA-P and Retro-MA, i ndicating Claimant was capable of

performing other work. SDA was denied due to lack of duration. (Department Exhibit A, pp 5-6).

(3) On June 7, 2012, the department caseworker sent Claimant notice that her application was denied.

(4) On June 18, 2012, Claimant filed a request for a hearing to contest the department's negative action.

(5) On August 7, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform unskilled medium work. SDA was denied because the information in the file was inadequate to ascertain whether Claimant is or would be disabled for 90 days. (Department Exhibit B, pp 1-2).

(6) Claimant has a history of a traumatic brain injury, head and neck injury, degenerative disc disease, chronic pain, neurofibromatosis, facet arthropathy, mood disorder and depression.

(7) On October 22, 2010, a CT of Claimant's cervical spine revealed posterior disc-osteophyte complex at C5-C6 with mild central canal narrowing and moderate right neuroforaminal narrowing at C5-C6. ( Department Exhibit A, pp 130-131).

(8) On September 6, 2011, Claimant presented to the emergency department complaining of suicidal ideation. She stated she was an alcoholic who had been recently drinking and became depressed. She stated she was upset because she started drinking and intended to hang herself from a rope in her house. She stated that she has had previous suicidal thoughts and previous suicide attempts and used to be a self mutilator. Upon admission to the emergency room her BAT was 0.041. She was dressed in disheveled clothing. Her facial expression was flat. Her mood and affect were sad and depressed. She stated she was unable to contract for safety at this time. She was diagnosed with acute exacerbation of bipolar disorder and acute suicidal ideation. (Department Exhibit A, pp 82-86).

(9) On September 8, 2011, Claimant was brought to the emergency room by ambulance for suicidal ideation. She stated she came in 2 nights ago wanting to kill herself, now she's not sure. She reported a previous plan of hanging herself with a rope on a playground at night; however denied any current suicidal ideation. She reported hearing voices that are not command in nature. She is uncertain if they are related to her alcohol use. The voices do not scare her and she realizes they are not real. She also occasionally sees a visual hallucination of a person. She reported difficulty in leaving her apartment for weeks because of paranoia someone will shoot her in the stomach three times. She does not express paranoia

at this time. She has previous s uicide attempts of cutting, overdosing and attempting to drink herself to death. She was d isheveled and her mood was tired. She was diagnosed with Mood Disorder and Alcoho l Dependence with a GAF of 52. (Department Exhibit A, pp 76-81).

(10) On November 2, 2011, Claim ant was admitted to the hospital for evaluation and treatment of depression and suicidal ideation. Claimant stated that when she woke up she had a plan to hang herself with an electric cord at a neighbor's house. She decided to talk to a friend first, who persuaded Claimant to come to the hospital. Her BAC was 0.189 when she woke up. She does have a hi story of alcohol withdrawal an d seizures and perhaps DTs. S he sees things when she withdr aws from alcohol. She has not had prior psychiatric hospita lizations, per se. She has had numerous treatment programs. She has not been able to sustain a period of abstinence more than 2 months in the last several years. She is supported by her parents and she is on State Disab ility for mental problems. Her appearance was unkem pt. She appeared tremulous at times and her gait was steady but sl ow. She was s haky and sometimes digressive. She was depressed. She sees sparkles and delusions. She does have suicidal thoughts, but contracts with staff. No homicidal ideations. Diagnosis: Axis I: Depr essive Dis order; Alcohol De pendence: Alcohol Induced Mood Disorder; Ax is III: Alcohol withdrawal seizures, possible delirium tremens, nausea, vomi ting, possible alc oholic gastritis; Axis V: GAF=10-20. She is an invo luntary admission. She has seriou s suicidal thoughts. She is out of control wit h her drinking an d she is at a significant risk to har m herself. She has cut herself in the pas t, but not recently and she requires inpatient involuntary psychiatric admission. Claimant was disc harged on November 8, 2011 in st able and improved condition. Her prognosis was guarded. (Department Exhibit A, pp 14-24).

(11) On December 12, 2011, at t he request of [redacted] [redacted] [redacted] Claimant's psychiatrist opi ned that Claimant could not stay focused and was lik ely to get overwhel med in a job setting. Therefore, Claimant was unable to engage in steps for training and/or employment at this time and was not released to work. Cla imant was d iagnosed wit h alcohol dependence in remission, mood disorder and psy chosis. (Department Exhibit A, p 68).

(12) On February 8, 2012, Claimant saw her primary care physician regarding neck pain, a tumor on her arch and her knees giv ing out. She had numbness down her right arm. Her pain was 8/10 to the neck and the arm did not hurt because it was numb. Her feet showed abnormalities and tenderness on palpation of t he plantar as pect of t he foot. On the left medial inner aspect of foot she had a 2 c m in diam eter lipoma that was fluctuant and mobile. She was di agnosed with neck pain and numbness,

plantar fasciitis of the left foot, neurofibromatosis, alcohol abuse and severe recurrent major depression. (Department Exhibit A, pp 99-101).

(13) On February 21, 2012, Claimant went to the emergency center complaining of diarrhea, cramping abdominal pain and loss of appetite. She was instructed to drink 10-12 cups of fluid a day, avoid caffeine and alcoholic beverages and follow up with her physician and was discharged. (Department Exhibit A, pp 90-103).

(14) On February 26, 2012, Claimant presented to the emergency center complaining of depression, and having drank alcohol while on antabuse. She was concerned about the side effects and also stated her psychiatrist had taken her off her medications. An IV was started and she was administered Zofran. Claimant was diagnosed with Acute Depression and Alcohol Abuse and discharged home. (Department Exhibit A, pp 66-89).

(15) On March 15, 2012, Claimant was transported to emergency center by ambulance with cold symptoms. Chest x-rays were normal. She was diagnosed with acute sinusitis and discharged. (Department Exhibit A, pp 50-65).

(16) On March 21, 2012, Claimant went to the emergency center complaining of shortness of breath and vomiting. An IV was started and she was administered Morphine, Zofran and Phenergan. She was diagnosed with an upper respiratory infection, nausea and mononucleosis and discharged with a prescription for Phenergan. (Department Exhibit C, pp 20-49).

(17) On April 16, 2012, Claimant presented to the emergency center stating she was drinking alcohol last night and she is having shortness of breath and difficulty breathing this morning along with nausea. An IV was started and she was administered Phenergan. She was diagnosed with nausea and vomiting secondary to alcohol abuse and discharged with a prescription for Phenergan. (Department Exhibit C, pp 4-19).

(18) On May 4, 2012, Claimant underwent a medical examination by the [redacted]. Claimant's chief complaints were neck pain, neurofibromatosis, mood disorder and depression. She has undergone surgical resection consisting of a partial mandibular resection on the left side and a partial left auricle resection in 1992 as a result of the neurofibromatosis. She has also been diagnosed with depression and mood disorder with psychosis. She has been hospitalized twice in 2011 for suicide attempts. She continues to hear voices and tries to compensate for it with biofeedback type therapy. She has not worked since 2008, when she was a substitute teacher but had to stop because of her hearing of voices and alcoholism. At the time of exam, there were no significant neurofibromas. There was no history of seizures or other

neurological deficits related to it. She does have findings of spinal stenosis at C5-C6 as well as in the lower lumbar spine. Clinically, other than mild scoliosis, there was no point tenderness. Her main issue appears to be her depression and psychosis. Her affect was stable during the examination, however she states she still hears voices but was otherwise appropriate. She is undergoing outpatient treatment. A neuropsychological evaluation would be warranted. (Department Exhibit A, pp 7-13).

(19) On May 9, 2012, Claimant presented to her primary care physician concerned that she may have had a stroke. She was walking sideways and had confusion and her symptoms were getting worse. Her speech abnormalities and gait problem began two weeks ago. She stated that she is able to comprehend, however, when she talks, the sentences make no sense. Coordination/cerebellum abnormalities were noted positive finger-nose test and dysdiadokinesia. A skin examination noted neurofibromas present. (Department Exhibit A, pp 94-96).

(20) On May 10, 2012, Claimant's CT of head without contrast revealed no acute intracranial abnormality. (Department Exhibit A, pp 104-107).

(21) On October 12, 2012, Claimant arrived at the emergency department as suicidal. She stated she is sometimes hearing things outside her door and is afraid to leave the house although cognitively she knows it does not make sense. She denied active suicidal ideation or plan but stated, "I kind of wish I didn't have to live and feel real panicky." She did threaten suicide by hanging herself from a swing set last November and was hospitalized at [redacted] at that time. She had been drinking a lot over the past couple of days and is worried she may have hurt her liver. Her mood appeared depressed and anxious. She was evaluated by a social worker and approved for discharge. The nausea was felt to be secondary to her recent alcohol binge. She was diagnosed with depression and discharged home with Phenergan. (Department Exhibit A, pp 108-129).

(22) Claimant is a 44 year old woman whose birthday is [redacted]. Claimant is 5'6" tall and weighs 180 lbs. Claimant completed high school and four years of college.

(23) 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 <u>not</u> 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 equi valent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. I f 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 year s? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the c lient have t he Residual Functional Capacity (RFC) to perform other work according to t he 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 #6-#22 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has show n, by clear and convincing documentary evidenc e and credib le testimony, her mental impairments meet or equal Listing 12.04(A) and 12.04(B):

**12.04** ***Affective disorders***: Characterized by a distur bance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refe rs to a prolonged emotion that colors the whole psychic li fe; it generally involves either depression or elation.

The requir ed 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 persist ence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characteri zed by at least four of the following:

a. Anhedonia or per vasive los s of intere st in a lmost 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 s yndrome 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 hi story of episodic periods manifested by the full symptomat ic picture of both manic and depressive syndromes (and current ly 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 decomp ensation, each of ex tended duration;

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA and SDA program. Consequently, the department's denial of her April 4, 2012, 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 SDA eligibility purposes.

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

1. The department shall process Claimant's April 4, 2012, 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 January, 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: January 14, 2013

Date Mailed: January 15, 2013

**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.

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

VLA/las

cc: [redacted]