

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012 66013
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 7, 2012
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in-person hearing was held in Madison Heights, Michigan on November 7, 2012. The Claimant appeared and testified as well as [REDACTED] who appeared as a witness. [REDACTED] also appeared as the Claimant's Authorized Hearing Representative. [REDACTED] ES, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P")

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P and retro Medical Assistance on February 16, 2012.
2. On May 18, 2012 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on May 18, 2012.

4. On July 2, 2012, the Department received the Claimant's timely written request for hearing.
5. On September 11, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. Exhibit 2
6. An Interim Order was issued on November 20, 2012 which indicated that additional medical evidence was received at the hearing and that the additional new medical evidence be obtained and submitted to the State Hearing Review Team. The new medical evidence was submitted to the SHRT on November 8, 2012.
7. On January 2, 2013 the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleged physical disabling impairments due to small bowel obstruction and chronic diverticulitis causing extreme pain and fever.
9. The Claimant alleged mental disabling impairment(s) including due to obsessive compulsive disorder, major depressive disorder recurrent, severe with psychotic features. ADHS predominantly inattentive type. Post-traumatic stress disorder, and stuttering.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5'7" in height; and weighed 151 pounds.
11. The Claimant has a high school education with some community college classes including medical secretarial, art and nursing. The Claimant indicated that she could not attend school now because of her mental impairments and her chronic bowel problems.
12. The Claimant's past employment was as a, certified nurse's assistant, ("CNA") providing home care to disabled and ill individuals. The Claimant currently works up to 9 hours a week when she can report on time.
13. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of

Human Services, formerly known as the Family Independence Agency, 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 Bridges Reference Tables ("RFT").

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(a) 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does

not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The

last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity; therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F.2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing*

Farris v Sec of Health and Human Services, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability based on mental disabling impairments due to obsessive compulsive disorder, Major depressive disorder recurrent, severe with psychotic features. ADHS predominantly inattentive type. Post-traumatic stress disorder, and stuttering.

The Claimant alleges physical disability based on physical impairments due to small bowel obstruction and chronic diverticulitis.

A summary of the claimant's Medical evidence follows.

The Claimant has received psychotherapeutic treatment since [REDACTED] and is currently seeing her therapist every 2 or 3 weeks and her treating psychiatrist every month. The Claimant's treating Psychiatrist and psychotherapist completed a DHS 49 D and E, consisting of a Psychological Examination Report and Mental Residual Functional Capacity Assessment. The report dated [REDACTED] is thorough and extensive. The Mental Residual Functional Capacity Assessment finds the Claimant markedly limited in all but two of twenty categories of the assessment. The Assessment notes that the Claimant's mental impairments seriously affect her in all areas of living. The Claimant was assessed as markedly limited in her understanding and memory, sustained concentration and persistence, social interaction and adaptation. Those categories most effecting the ability to work successfully, such as ability to interact appropriately with general public, ask simple questions and ability to maintain socially appropriate behavior, to adhere to basic standards of neatness and cleanliness, adapt to work settings, take appropriate precautions, ability to use public transportation, ability to set goals, remember locations and work-like procedures, understand instructions, ability to perform activities within a schedule and maintain regular attendance and punctuality, ability to sustain an ordinary routine and lastly to complete a normal workday worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods, all were markedly limited abilities.

The extensive psychiatric evaluation reports stuttering, and a depressed and anxious affect. A disturbance of normal fluency of speech, characterized by repeating words and phrases was noted with blunt affect. The symptoms of mental impairment have been life long, first appearing at age 3. A battery of diagnostic screening tests and instruments were attempted by the examiner but the report notes that the Claimant was unable to complete any of them due to poor focus and OCD. The patient requires her

mother's communication assistance at all of her appointments. The Claimant was reported to need the assistance of her parents to manage daily activities. The Claimant was reported to have no social activities or support beyond her parents and her work interactions. The report notes that her work schedule is largely dependent on her ability to complete her morning hygiene and grooming activities and arrive at work on time. Impairment due to obsessive re-writing of her paperwork has disabled her work functioning. The report concludes that the Claimant will likely require the assistance of a guardian appointed from outside the family to assist her with the management of her funds. The Claimant's GAF score was 50 and the diagnosis was obsessive compulsive disorder, Major Depressive Disorder, Recurrent, Severe, with psychotic features, ADHS inattentive type and Post Traumatic Stress Disorder (PTSD)

A psychiatric examination was conducted on [REDACTED]. During the examination the Claimant reported that focus and concentration has improved on Ritalin. The history reported was ADD, with hyperactivity, major depressive disorder recurrent, obsessive compulsive disorder and post traumatic stress disorder.

On [REDACTED] patient was seen and found to have continuing symptoms of OCD including repetitive actions to make sure task is done well enough, requires extensive time for dressing and grooming. Speech is halting, repetitive and affect withdrawn.

The Claimant was seen for treatment on [REDACTED]. The notes indicate that Claimant was stable. A medication review was conducted; the evaluator noted anxiety was elevated but that patient appeared well groomed, able to communicate, affect pleasant, good insight, judgment appropriate for age and IQ. The GAF score was 60 and the Diagnosis was AD/HD combined type and OCD.

On [REDACTED] patient was seen for treatment and reported Ritalin was working feels, more focused, able to move faster, more punctual arriving to work, able to do her morning grooming routine faster, able to sort through and discard items, less hoarding.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some objective medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in

Appendix 1 of Subpart P of 20 C.F.R., Part 404. The Claimant asserts mental disabling impairments due to mood disorder with Post-traumatic stress disorder, and depressive disorder and antisocial personality disorder.

Listings 12.04 and 12.06 were reviewed. Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of 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 distractability; 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 on 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;

Listing 12.06 Anxiety Disorders requires:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

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 both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home.

In this case, the record reveals ongoing treatment biweekly psychotherapy treatment for obsessive compulsive disorder, major depressive disorder recurrent, severe with psychotic features. ADHD predominantly inattentive type. Post-traumatic stress disorder, and stuttering. Medical records document a pervasive loss of interest in activities, sleep disturbance, episodes of extreme anxiety, and extreme depression and marked restrictions of social functioning and difficulties maintaining concentration, persistence or pace as well as adaptation. The Claimant has been treating consistently since [REDACTED]. The Claimant credibly testified that she suffers from emotional problems and has [REDACTED] throughout her life. It was noted and was observed by the undersigned that the Claimant, besides stuttering, had difficulty communicating and spoke in a repetitive fashion repeating words and phrases and had difficulty completing a sentence without repeating it several times. Claimant also did not exhibit continuing concentration during the hearing and at times lost her thoughts and had to be reminded about what she was speaking about and had to start over. She credibly described difficulty with her morning routine, sometimes taking as long as several hours to get out of the bathroom attending to hygiene and grooming. She frequently repeats tasks such as checking the door and often forgets to turn off the water. The Claimant also credibly testified that preparation of her care notes from work are difficult to complete due to problems with concentration and sometimes she must take a day off just to complete paperwork. The Claimant's mother, whom she lives with, testified that she frequently suffers from excessive hair washing, sees objects and hears voices in her mind that are not there, has difficulty going to sleep at night, and due to these difficulties caused by her mental impairments makes it impossible to hold a full time job as she cannot report on time. From time to time the Claimant worries about criminals harming her.

As a result, the records and testimony show that the Claimant has marked restrictions in daily living and social functioning and adaptation and has a GAF of 50. Deference was

also accorded to the medical opinion of the Claimant's treating psychiatrist and psychotherapist. The evaluations of the treating physician and the medical conclusion of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record under 20 CFR§ 404.1527(d)(2),

Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent of, a listed impairment within 12.00, specifically 12.04 A Depressive Syndrome and 12.06 Anxiety Disorders (A),1,(4) recurrent obsessions or compulsions which are a cause of marked distress and which affect all areas of functioning. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

In this case, the Claimant is found disabled for purposes of the MA-P.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the February 16, 2012 MA-P and retro MA-P application (November 2011) to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall review the Claimant's continued eligibility in January 2014 in accordance with department policy.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 29, 2013

Date Mailed: January 29, 2013

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

LMF/cl

cc:

