

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201277469
Issue No: 2009
Case No: [REDACTED]
Hearing Date: January 9, 2013
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on January 9, 2013. The claimant appeared and provided testimony. The claimant was represented by attorney [REDACTED], from Legal Aid of Western Michigan. The department witness was Darlene Leonard.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

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

1. On June 25, 2012, claimant filed an application for Medical Assistance benefits alleging disability.
2. On August 28, 2012, the Medical Review Team (MRT) denied claimant's application.
3. On September 4, 2012, the department caseworker sent claimant/representative notice that her application was denied.
4. On September 11, 2012, claimant/representative filed a request for a hearing to contest the department's negative action.
5. On November 8, 2012, the State Hearing Review Team (SHRT) denied claimant's application.

6. An in-person hearing was held on January 9, 2013.
7. As of the date of hearing, claimant was a 54-year-old female standing 5'2" tall and weighing 146 pounds. Claimant has a high school education.
8. Claimant testified that she does not smoke cigarettes, drink alcohol or use illegal drugs.
9. Claimant does not have a driver's license and has never had one.
10. Claimant is not currently working. Claimant has never held a job.
11. Claimant alleges disability on the basis of joint and muscle pain, dizziness, headaches, depression, anxiety disorder and insomnia.
12. The claimant was seen for a disability evaluation on May 20, 2012. The claimant was noted to have no independent living or gainful employment. She was found capable of understanding, remembering and carrying out instructions and making decisions regarding work related matters. However, she was likely to continue to be unable to interact appropriately with others or secure and maintain gainful employment due to factors associated with her panic disorder, generalized anxiety disorder, and dependent personality traits. Claimant was diagnosed with a history of anorexia; panic disorder with history or agoraphobia; dependent personality disorder; and assigned a GAF of 50.
13. On May 31, 2012, the claimant underwent an independent physical examination. The claimant's gait was stable, alternating with mincing steps for no obvious reason. Claimant appeared to try and lose her balance by moving to the extremes of positions. Grip and pincher strength was intact, 5/5. Dexterity appeared unimpaired. She had no difficulty getting on and off the exam table, mild difficulty heel and toe walking, mild difficulty squatting and arising, no difficulty balancing and no difficulty performing the tandem walk. Motor and sensory function appeared intact. Romberg testing was negative, even with lifting her toes and balancing on her heels. Straight leg raising was negative. The physician opined that the claimant may have an element of degenerative joint disease present. Her constellation of unusual symptoms may be related to some type of autoimmune disorder. She did not require any assistive device.
14. Claimant has been in treatment through Riverwood Center. A July 11, 2012 assessment indicated that the claimant tried to work at age 16 and couldn't manage her emotions, cried and only worked a few days. The claimant reports mostly staying in her house her entire lifetime. When she does leave the house, her anxiety-related symptoms are triggered. Claimant has previous diagnoses of anorexia and agoraphobia.

Claimant's mood was anxious. Her affect was primarily appropriate. Her speech was normal for age and intellect. Her behavior and motor activity was restless and overactive with poor eye contact. Her short-term and long-term memory was impaired. Claimant was diagnosed with panic disorder with agoraphobia; dependent personality disorder and posttraumatic stress disorder and assigned a GAF of 38.

15. On August 17, 2012, claimant's physician completed an assessment of ability to do mental work-related activities. The claimant was rated as extremely limited in the following areas: dealing with the public; dealing with work stresses. The claimant was rated as markedly limited in the following areas: behave in an emotionally stable manner; relate predictably in social situations. The claimant was rated as moderately limited in the following areas: relate to co-workers; interact with supervisors. The claimant was rated as mildly limited in the following areas: use judgment; function independently; maintain attention/concentration; complex job instructions; detailed but not complex job instructions; demonstrate reliability. The claimant was rated with no limitations in activities of daily living; moderate limitations in maintaining social functioning; and moderate difficulties in maintaining concentration, persistence and pace.
16. On August 24, 2012, claimant's therapist completed an assessment of ability to do mental work-related activities. The claimant was rated as extremely limited in the following areas: relate to co-workers; deal with the public; interact with supervisors; deal with work stresses; function independently; complex job instructions; detailed but not complex job instructions; behave in an emotionally stable manner; relate predictably in social situations. The claimant was rated as markedly limited in the following areas: use judgment; maintain attention/concentration. The claimant was moderately limited in restrictions of activities of daily living; extremely limited in difficulties in maintaining social functioning; and markedly limited in difficulties maintaining concentration, persistence, or pace.
17. A July 27, 2012 Medical Examination Report (DHS-49) indicated the claimant has a history of generalized anxiety disorder 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). The Department of Human Services (DHS or department) 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 Program Reference Manual (RFT).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...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 federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 416.909(c).

3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a)

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

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. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). 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 limitations are 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. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are 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)(4).

Applying the sequential analysis, the claimant is not disqualified at step 1 of the analysis as claimant is not currently working. 20 CFR 416.920(b). Therefore, the analysis proceeds to step 2.

At Step 2, the claimant's symptoms are evaluated to see there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The claimant has presented medical evidence establishing that she does have some mental limitations on her ability to perform basic work activities. The medical evidence has established that the claimant has an impairment, or combination of impairments, that has more than a *de minimus* effect on the claimant's basic work activities. Further,

the impairments have lasted continuously for twelve months; therefore, the claimant is not disqualified from receiving MA-P benefits at Step 2.

The analysis would next proceed to Step 3, where the medical evidence of claimant's condition would be compared to the listings. In light of the medical evidence, listing 12.06 was considered. This Administrative Law Judge finds that the claimant meets the listing of 12.06. There are medically documented findings of 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 (i.e. leaving the house) and also medically documented findings of recurrent panic attacks and irrational fears which are a source of marked distress and these result in marked restrictions of maintaining social function and marked restriction in maintaining concentration, persistence, or pace and also result in a complete inability to function independently outside the area of claimant's home. The claimant credibly testified that she has never held employment, has never held a driver's license, does not leave the house unless she is forced to by circumstances and has severe anxiety when she does. Claimant's diagnoses have always been panic disorder with agoraphobia and dependent personality disorder. Her most recent GAF score was 38. Thus, this Administrative Law Judge finds the claimant meets listing 12.06 and should be considered disabled.

The claimant has presented the required competent, material and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department has not established that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance benefits. Therefore, the department's determination is **REVERSED**.

1. The department shall process Claimant's June 25, 2012 MA application and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining non-medical eligibility factors.
2. The department shall review Claimant's medical condition for improvement in February, 2014, unless Claimant has received a favorable Social Security determination.

/s/ _____

Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 6, 2013

Date Mailed: February 6, 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.

NOTICE: 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.

201277469/SLM

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

SLM/cr

cc:

