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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012-9145
Issue No.: 2009
Case No.: [redacted]
Hearing Date: January 18, 2012
County: Ottawa

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 February 7, 2012. Claimant, represented by [redacted] of [redacted] did not appear or testify. An affidavit dated March 19, 2012, was submitted on her behalf.

During the hearing, Claimant's representative waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On May 2, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied 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 April 29, 2011, Claimant filed an application for MA benefits alleging disability.

(2) On July 13, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P for lack of duration. MRT did approve SDA. However, Claimant had not applied for SDA.

(3) On July 26, 2011, the department sent notice to Claimant that her application for Medicaid had been denied.

(4) On October 26, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On December 16, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits indicating Claimant retains the capacity to perform simple, unskilled, and light work. (Department Exhibit B, pp 1-2).

(6) Claimant has a history of manic agoraphobia, major depressive disorder, degenerative disc disease status post lumbar interbody fusion with pedicle screw fixation, bipolar disorder, post traumatic stress disorder (PTSD), and borderline personality disorder.

(7) On October 26, 2009, Claimant underwent a psychosocial assessment and update with [redacted]. Claimant is having constant thoughts of suicide with plan to find a way to climb up on the clock tower in downtown Holland and throw herself off. Her family and friends are concerned and do not want to let her out of their sight. She has severe back pain and is seeing a doctor who encouraged her to come back to CMH because of her suicidal thoughts. She reports significant symptoms of depression that include problems falling and staying asleep, racing thoughts, anhedonia, irritability, poor ADL's, lack of energy and motivation, feelings of helplessness and worthlessness, is isolating herself in her room and does not want to be around people. She is picking at fingernails and skin to stop thoughts of wanting to cut. She has a history of cutting. She reports significant symptoms of panic attacks that occur whenever she leaves the house. They include: trouble breathing, pounding heart, clammy hands, and trembling, hot/cold chills. She will not go into large places like Walmart or a grocery store. Claimant has a longstanding history of mood swings, self injurious behavior, panic attacks and occasional crying spells and has been in and out of services since 1996 with primary complaints of depression, anxiety, and anger. She is a victim of childhood sexual abuse and has little recollection of her life before the age of 13 years old. She continues to have nightmares, flashbacks, and intrusive thoughts of abuse. At times she will yell and scream and punch the wall and hit herself on the head. When performing self injurious behavior such as punching herself, she states that she would prefer to be attacking someone else. She describes anxiety and panic symptoms: heart palpitations, chest pressure, shortness of breath, sense of impending doom, nausea, and Diaphoresis. Claimant was cooperative and untidy. She was tearful off and on throughout the session. She is clearly having problems with depression to the point of not being able to care for herself. She said she is not getting out of bed much. Her intellectual functioning is below average and her insight is poor.

Diagnosis: Axis I: Major Depressive Disorder, recurrent, severe; Panic Disorder with Agoraphobia; Axis V: GAF=40. (Department Exhibit A, pp 76-85).

(8) On December 9, 2009, Claimant was referred back to CMH by her primary care physician due to suicidal ideation. At this time, Claimant has episodes of isolating, locking herself in her bedroom, cutting herself, and punching herself in the face. Claimant has difficulty sleeping, she only gets about fours hours at night due to her back pain and racing thoughts. She occasionally has nightmares and flashbacks of past abuse including sexual abuse up to the age of 13. She has chronic anxiety and panic attacks happening three to four times a week during which she becomes anxious, perspires, gags until she vomits, her skin becomes flush, she has chest pain, shortness of breath, and feels like she is having a heart attack. She feels sad and depressed because she is no longer able to work. Claimant has a long history of mood swings, self injurious behavior, panic attacks and crying spells. Diagnosis: Axis I: Major Depressive Disorder, recurrent, severe; Panic Disorder with Agoraphobia; Posttraumatic Stress Disorder, chronic by history; Polysubstance Abuse in full sustained remission. Axis II: Borderline Personality Disorder; Axis III: Chronic back pain; Axis IV: Homeless, unemployed, limited health insurance, chronic physical and mental illness, chronic pain, history of childhood sexual abuse; Axis V: GAF=43. (Department Exhibit A, pp 130-132).

(9) On December 2, 2010, Claimant was evaluated by an orthopedist to review the findings of her most recent round of lumbar imaging studies. At L4-L5 there has been a worsening in the extent of degenerative change of the disc. The hyperintense endplate changes at the inferior endplate of L4 and the superior endplate of L5 are now worse. There does continue to be mild narrowing in the lateral recess at the L4-L5 level on the right. There is minimal narrowing in the lateral recess at L5-S1 on the left and none on the right. When Claimant is in an upright and weight bearing position, the height of the disc at the L4-L5 level is slightly decreased. Also, there is perhaps a very, very minimal retrolisthesis at this level. Claimant presents with ongoing axial back pain and right leg radiating pain seen in conjunction with degenerative disc disease at L4-L5 which has progressed over the last year. There has been worsening of the L4-L5 disc both with respect to loss of height, particularly when she is in an upright and weight bearing position, and also with respect to the signal change within the inferior endplate of L4 and the superior endplate of L5. Both the loss of height and degenerative endplate changes have worsened markedly over the last year. The option of surgical intervention was discussed as she has already undergone physical therapy and interventional steroid injections which exacerbated her symptoms, rather than improving them. The probability of success with a surgical procedure was discussed, which unfortunately is modest at best. This is

unfortunately a difficult situation, as even if Claimant has the surgery, there is still the risk of progressive degeneration at adjacent segments. (Department Exhibit B, pp 17-18).

(10) On April 27, 2011, Claimant was admitted to the hospital and underwent a right L4-L5 transforaminal lumber interbody fusion with pedicle screw fixation. Postoperative day 3, Claimant had a brief fever spike overnight along with recurrent severe right leg pain. Neurological exam remained nonfocal. Claimant's analgesics and muscle relaxants were adjusted accordingly. Postoperatively day 4, Claimant was afebrile and had stable vital signs. She was ambulating independently. She was deemed medically stable and discharged on May 1, 2011. Postoperative Diagnoses: (1) Degenerative disc disease, progressive, L4-L5; (2) Severe intractable axial low back pain. (Department Exhibit B, pp 12-16).

(11) On July 28, 2011, Claimant saw her back surgeon for her 12-week post surgery follow-up. She describes mild aching in the left buttock, but no radiating pain. Of greater concern, however, is the onset of nausea and vomiting over the past three weeks. This has been a daily occurrence. She also describes "hot flashes." She admits to feeling extremely anxious due to changing and undesirable social circumstances. Her current medication regimen consists of Vicodin and Zanaflex. She denies the addition of any medications preceding her nausea three weeks ago and also denies discontinuing any medications at that same time. On exam, Claimant was pleasant, but nauseated with emesis in the office. Inspection of her wound revealed two small incisions which appeared in good order. Imaging revealed the presence of pedicle screw fixation across the L4-L5 segment. All four pedicle screws remain well positioned. The interbody implant remains at its original position. Flexion and extension maneuvers reveal no ongoing motion across the L4-L5 segment. Alignment is maintained throughout the remaining lumbar spine. To further investigate her night sweats and persistent nausea in relation to her recent lumbar fusion, she will be scheduled for laboratory studies to evaluate for inflammation/infection markers. (Department Exhibit B, pp 9-10).

(12) On October 26, 2011, Claimant underwent a psychiatric evaluation by the Disability Determination Service. Claimant has had problems with anxiety since she was 13 years old and now has panic attacks daily. Her last panic attack was the morning of the evaluation and they happen anywhere at anytime. They last up to an hour and she does need to leave the situation. She does need someone with her when she leaves her house. When she has a panic attack, she has nausea with vomiting, she feels hot and sweaty, she becomes shaky, her heart races and she feels like she is having a heart attack, and she has diarrhea. She complains of having back pain for the past 4 years and that she had back surgery in April of

2011. She has pain daily and constantly in her lower back and neck. On a scale of 0 to 10, she rates her pain currently at 6. When the pain is at its worst, she rates it at a 10, and when the pain is at its least, she rates it as a 4. She cannot stand or walk very long. She complains of being depressed for the past 10 years since her children were adopted out. She does withdraw from others and isolate herself. She has no interest, motivation, or enjoyment in life. She sleeps less than normal, and her appetite varies. At times, she feels hopeless and worthless. She has thoughts of suicide at times, but she has no intentions or plans of hurting herself or anyone else. She has attempted suicide 2 times, the last in March 2011, when she took a knife to cut herself but her partner stopped her. She denies any other physical, mental, or emotional reasons that she cannot work. Claimant's affect was depressed and anxious. She has a fear of the outside and of people, stating that, "I hate people." When she is angry, she will "beat the crap out of myself," and her partner states that she will hit herself in the head until she turns black and blue and her eyes swell. She also has cut herself in the past up until a year ago. Diagnoses: Axis I: Panic Disorder with Agoraphobia; Major Depressive Disorder-recurrent, moderate; History of drug abuse in remission; Axis II: Borderline Personality Disorder; Axis III: Complaints of chronic pain post surgical; Axis IV: Severity of psychosocial stressors – moderate; Axis V: GAF=50. Prognosis: The potential for Claimant becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded. (Department Exhibit B, pp 3-7).

(13) On January 12, 2012, Claimant underwent a medical examination on behalf of the department. Claimant had a history of low back pain with previous radicular pain, now improved but with persistent back pain, also severe anxiety. She was currently diagnosed with lumbar degenerative disc disease, anxiety disorder, bipolar disorder and hypertension. The examining physician found Claimant had physical limitations expected to last more than 90 days. Claimant was able to stand/walk or sit for less than 2 hours a day due to back surgery and back pain limiting function. The physician also noted Claimant had mental limitations in social interaction due to anxiety and her bipolar disorder, and needed assistance with bathing. (Claimant Exhibit B, pp 1-2).

(14) Claimant is a [redacted] woman whose birthday is [redacted]. Claimant is 5'7" tall and weighs 238 lbs. Claimant completed the eighth grade. Claimant last worked in April 2007.

(15) Claimant had applied for 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 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 not 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 equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If 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 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

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? 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-#13 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, that his mental impairments meet or equal Listing 12.04A:

12.04 ***Affective disorders***: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

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

   a. Anhedonia or pervasive loss of interest in almost all activities; or

   b. Appetite disturbance with change in weight; or

   c. Sleep disturbance; or

   d. Psychomotor agitation or retardation; or

   e. Decreased energy; or

   f. Feelings of guilt or worthlessness; or

   g. Difficulty concentrating or thinking; or

   h. Thoughts of suicide; or

   i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

   a. Hyperactivity; or

   b. Pressure of speech; or

c. Flight of ideas; or

d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her April 29, 2011, MA/Retro-MA 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 MA/Retro-MA eligibility purposes.

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

1. The department shall process Claimant's April 29, 2011, MA/Retro-MA 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 May 2013, 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.

/S/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 5/21/12

Date Mailed: 5/21/12

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.

VLA/ds