

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-63708
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: October 4, 2012
County: Cheboygan

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on October 4, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Jobs Manager [REDACTED] [REDACTED]

During the hearing, Claimant 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 December 20, 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), Retro-MA and State Disability Assistance (SDA)?

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 July 22, 2011, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On June 23, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA, indicating Claimant was capable of performing other work. SDA was denied due to lack of duration. (Department Exhibit A, pp 19-20).

- (3) On June 27, 2012, the department cashier sent Claimant notice that her application was denied.
- (4) On July 9, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 23, 2012, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform her past relevant work. SDA was denied due to the capacity to perform past relevant work. (Department Exhibit B, pp 1-2).
- (6) On December 20, 2012, the SHRT found Claimant was not disabled and retained the capacity to perform a wide range of light work. A finding about the capacity of prior work has not been made. SDA is denied because the nature and severity of Claimant's impairments would not preclude work activity at the stated level for 90 days. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of a traumatic brain injury, head and neck injury, chronic pain, facet arthropathy and depression.
- (8) On October 6, 2009, a digital motion x-ray of Claimant's cervical spine revealed damage to the posterior longitudinal ligament indicated by a widening of the posterior intervertebral disc space at C4-C5 and C5-C6. Damage to the interspinous ligament is indicated by a separation between C5-C6 and C6-C7 spinous processes. Damage to the anterior longitudinal ligament is indicated by an anterior widening of the intervertebral disc space at C2-C3 and C3-C4. Damage to the capsular ligament is indicated by significant gapping of the facet joint at C5-C6 bilaterally and gapping of the facet joint at C3-C4 bilaterally and C4-C5 bilaterally. Damage to the capsular ligament is indicated by the intervertebral foraminal encroachment of the facet joint at C3-C4 bilaterally. Damage to the alar and accessory ligaments is indicated by a significant overhang of the lateral mass of C1 to the right and overhang of the lateral mass of C1 to the left. Also change in the para-odontoid space during left lateral bending and significant change in the para-odontoid space during the right lateral bending. (Department Exhibit A, pp 101-102).
- (9) On April 13, 2011, Claimant met with her physician at the [REDACTED] and [REDACTED]. She had pain in her left shoulder, neck, middle back and low back, described as aching, with electric pain traveling down her left arm. The pain radiating down her arms and up into her head was causing headaches. She was not working due to the injury and pain. She was diagnosed with facet arthropathy, low back pain, neck pain, whiplash injury, shoulder pain and chronic pain due to trauma. Claimant's physician at the [REDACTED] and [REDACTED] took her off work for 3 months and prescribed household replacement services. (Claimant Exhibit A, pp 10-13).

- (10) On June 15, 2011, Claimant followed up with her physician at the pain clinic. Claimant was taken off work for three months to permit improvement. She also needed self-care assistance and medication administration assistance from her family, in addition to housework assistance. (Department Exhibit A, p 36; Department Exhibit B, pp 30-33).
- (11) On August 24, 2011, Claimant followed up with her physician at the pain clinic. Claimant had left-sided moderate tenderness and straightening of cervical lordosis. She also had mild bilateral trapezius tenderness and moderate left occipital tenderness. She was diagnosed with chronic pain due to trauma and was continued off work for three months to allow improvement. She was also started on physical therapy. (Department Exhibit B, pp 25-29).
- (12) On August 29, 2011, the MRI of Claimant's cervical spine revealed mild to moderate broad-based bulging of disc material at the C5-C6 interspace, eccentric to the right without compromise of the central canal. The nerve root exit zone is widely patent at this level. At the C6-C7 interspace, there was mild broad-based bulging of disc material noted centrally and somewhat eccentric to the left, without central canal stenosis or nerve root exit narrowing. There was a normal signal emanating from the brainstem, cervical cord, and cervical subarachnoid space as well as from the osseous structures/bone marrow. There were also mild degenerative disc changes noted from C5-T1, with mild loss of the normal lordotic curvature. (Department Exhibit A, p 88).
- (13) On March 30, 2012, Claimant underwent a medical examination on behalf of the department. Claimant's chief complaints were injury to her thoracic spine, head trauma, right leg pain, sensitivity to light and sound and pain in back shoulders and arms and stress and anxiety. The examining physician opined that Claimant appears to have sustained a whip lash injury to the cervical spine as well as findings suggestive of post concussive disorder. There were no focal neurological deficits or radicular symptoms. She complained of chronic headaches which may be related to her neck but also may be due to her closed head injury. She is not undergoing any treatment and reinstatement of pain management and supportive care would be indicated to avoid any further deterioration. (Department Exhibit A, pp 27-31).
- (14) On November 14, 2012, Claimant underwent a psychological evaluation on behalf of the department. Claimant has short-term and long-term memory issues. She has trouble focusing, concentrating and maintaining attention. She feels hopeless and helpless. She has experienced urges and impulses to hurt others but has not acted on the urges. She has been depressed and anxious and was tearful during the evaluation. Diagnosis: Axis I: Major Depression, moderate to severe level; Cognitive Disorder; Organic Mood Syndrome; Axis IV: Moderately Severe Psychosocial

Stressors; Axis V: GAF=52. Prognosis is guarded to fair and would be improved with mental health intervention. (Department Exhibit D, pp 1-10).

- (15) Claimant is a 43 year old woman whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 185 lbs. Claimant completed high school.
- (16) 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 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 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 #7-#15 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, her mental impairments meet or equal Listing 12.04(A) and 12.04(B):

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, 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 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/Retro-MA and SDA program. Consequently, the department's denial of her July 22, 2011, 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 July 22, 2011, 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 11, 2013

Date Mailed: January 11, 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:

