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

IN THE MATTER OF:		Reg. No: 201269197 Issue No: 2009, 4031				
		133uc 140. 2003, 4001				
ADMINISTRATIVE LAW JUDGE: Aaron McClintic						
DECISION AND ORDER						
and MCL 400 telephone he	s before the undersigned Administ rative 0.37 upon the Claimant 's request for a earing was held on nent was represented by	• .				
	ISSUE					
Did the Department properly deny Claimant's Medical Assi stance program (MA-P) and State Disability Assistance (SDA) applications?						
FINDINGS OF FACT						
The Administrative Law Judge, based upon — the competent, material and substantial evidence on the whole record, finds as material fact:						
1.	Claimant applied for MA-P and SDA on					
2.	The Medical Review Team denied the a	application on				
3.	Claimant filed a request for hearing on and SDA denials.	regarding the MA				
4.	A telephone hearing was held on					
5.	On application because the medic allevid claimant retains the capacity to perform and repetitive nature.					
6.	Claimant is 5' 7" ta II and weighs 140 po	ounds having lost 20 pounds in the				

last year.

- 7. Claimant is 47 years of age.
- 8. Claimant's impairments have been me dically diagnosed as asthma, hypertension, ADHD, PTSD, bipolar disorder and rheumatoid arthritis.
- 9. Claimant has the follo wing symptoms: pain, fati gue, insomnia, memory and concentration problems, panic atta cks, social isolation, and night terrors.
- 10. Claimant completed high school.
- 11. Claimant is able to read, write, and perform basic math skills.
- 12. Claimant is not working. Claimant last worked in receptionist.
- 13. Cla imant lives with her son.
- 14. Claimant testified that she cannot perform some household chores.
- 15. Claimant takes the following prescribed medications:
 - a. b. c. d.
- 16. At hearing the record was ex tended to gather updated medical information. Claimant agreed to this and waived timeliness standards.
- 17. After updated records were forw arded to the State Hearing Review Team they again denied on capacity to perform light, unskilled work.
- 18. Claimant testified to the following physical limitations:

i. Sitting: 20-30 minutes
ii. Standing: 10-15 minutes
iii. Walking: 20-30 yards
iv. Bend/stoop: difficulty
v. Lifting: 5-10 lbs.

- vi. Grip/grasp: no limitations
- 19. Claimant testified to experiencing pain at a high level of 8-10 on a ten point scale with some pain always present at a low level of 2-3.
- 20. In a mental residual functional capacity assessment dated
 Claimant was found to have a GAF score of 55 with diagnoses of

- dysthymic disorder and history of cocaine dependence. Her prognosis was found to be "guarded".
- 21. In a consultative physical exam ination report the medic al source statement is as follows: "Based on today's exam, the Claimant has rheumatoid arthritis with mild swelling in the left knee and tenderness in the metacarpals. There is mild limitation of physical activity. She has high blood pressure with no signs of angina or congestive heart failure. There is mild limitation of physical activity. She has back pain that radiates to the left leg. Straight leg raising is mild ly positive in the left leg. There is mild limitation of physical activity."
- 22. In Claimant was found to have a GAF score of 50 by her treating psychiatrist.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medic al Assistance (MA-P) 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 administers the MA-P 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 (PRM).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies are found in the Bridges Administra tive Manual (BAM), the Program Eligibility Manual (BEM) and the Bridges Reference Manual (PRM).

The Department conforms to state statute in administering the SDA program. 2000 PA 294, Sec. 604, of the statute states:

- (1) The department shall operat e a state disability as sistance program. Except as provided in subsection
- (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a phy sical or mental impairment which meets federal supplemental se curity income disability standards, exc ept that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Feder al Supplemental Security Income (SSI) policy in determining el igibility for disability under the MA-P program. Under SSI, disability is defined as:

...the inability to do any substant ial 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.

Federal regulations r equire that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an indiv idual is disabled, 20 CFR 4 16.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual f unctional c apacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if t he indiv idual is working and if the work is substantial gainful ac tivity. 20 CFR 416.9 20(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits

an individual's physical or mental ab ility to perform basic work activities. Examples of these include:

- 1. Physical functions s uch as walkin g, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical and mental limitations upon Claimant's ability to perform basic work activities such as walk ing, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysi s, 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 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 1.04 and 12.04 were considered.

The person claiming a physica I or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/pre scribed treatment, prognosis for a 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 CRF 416.913. A conc lusory statement by a physici an or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analys is to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 y ears. The trier of fact must determine whet her the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past relevant work was as a receptionist. Working as a receptionist as te stified to by Claimant would be considered sedentary work. Claimant would not be able to perform his past relevant work because he is not able to do the requisite sitting, standing, walking, and lifting for sedentary exertional work. This Administrative Law Judge will continue through step 5.

In the final step of the analys is, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claim ant form doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

- 1. residual fu nctional c apacity de fined simply as "what can you still do despite your limitations? 20 CFR 416.945;
- 2. age, education, and work experience, 20 CFR 416.963-965; and
- 3. the kinds of work which exist in sig nificant numbers in the national economy which the claimant could per form despite her limitations. 20 CFR 416.966.

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 class ify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dicti onary of Occupational Titles, publis hed by the Department of Labor.... 20 CFR 416.967.

Sedentary work. 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. 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 categor y 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. Medium work involves lifting on more than 50 pounds at a time with frequent lifting or carrying of objects weight hing up to 25 pounds. If someone can domedium work, we determine that he or she can also do sed entary and light work. 20 CFR 416.967(c).

Heavy wor k. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weig hing up to 50 pounds. If someone can d heavy wor k, we determine that he or she c an also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analy sis, the Claimant has already establis hed a prima fa cie case of disability. *Richardson v Secretary of Health and Hum an Services*, 732 Fd2 962 (6 th Cir, 1984). Moving forward the burden of proof rest s with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of claim ant's extensive medical record and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exerti onal and non-exertional impairm ents render claim ant unable to engage in a full range of even sedentary wo rk activities on a regular and c ontinuing basis. 20 CFR 404, Subpart P, Appendix 11, Sect ion 201.00(h). See Social Sec urity Ruling 83-10; Wilson v Heckler, 743 F2d 216 (1986). The dep artment has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations.

Accordingly, this Administrative Law Judge concludes that claimant is disabled f or purposes of the MA-P and SD A programs as of regarding her limitations and ab ility to sit, stand, walk, lift and carry is credible and supported by substantial medical evidence. Claimant also has a psychologic al impairment that is substantially limiting.

DECISION AND ORDER

The Administrative Law Judge,	based upon t	he above find	dings of fact and	conclusion s
of law, decides that Claimant is	medically disa	abled as of		

Accordingly, the Departm ent's decision is hereby **REVERSED** and the Department is **ORDERED** to initiate a review of the applic ation for MA and SDA dated if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for

Aaron
Administrative
for

Department

McClintic Law Judge Maura Corrigan, Director of Human Services

Date Signed: <u>03/15/2013</u>

Date Mailed: <u>03/18/2013</u>

NOTICE: Administrative Hearings may order a rehearing or reconsider ation on either its own motion or at the request of a party within 30 days of the mailing date of this Decis ion and O rder. Administrative Hearings will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 receipt of the Decision and Order or, if a ti mely 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 e rror, 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

AM/kl

CC:

