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

IN THE MATTER OF:

Reg No.: 2013 16179
Issue No.: 2009, 4031
Case No.:
Hearing Date: April 1, 2013
Macomb County DHS (36)

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 Sterling Heights, Michigan on April 1, 2013. The Claimant appeared and testified. Witness also appeared. the Claimant's Authorized Hearing Representative (AHR), also appeared on Claimant's behalf. , 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") and Stated Disability Assistance ("SDA" benefit programs?

FINDINGS OF FACT

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

1. On June 4, 2012 the Claimant submitted an application for public assistance seeking MA-P and retro MA-P and SDA.

2. On October 2, 2012 the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)

3. The Department notified the Claimant of the MRT determination on October 12, 2012.

4. On October 22, 2012, the Department received the Claimant's timely written request for hearing.

5. On January 30, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. Exhibit 2

6. An Interim Order was issued on April 9, 2013 submitting the new evidence that was submitted for the first time at the hearing. The new medical evidence was submitted to the SHRT on April 5, 2013.

7. On June 5, 2013 the State Hearing Review Team found the Claimant not disabled.

8. The Claimant alleged mental disabling impairment(s) due to anxiety, panic attack, major Depression.

9. The Claimant has alleged physical disabling impairments due to hyperadrenergic state (POTS).

10. At the time of hearing, the Claimant was ██ years old with a ██████████ birth date. The Claimant was 5'10" in height; and weighed 140 pounds.

11. The Claimant has a college education. The Claimant's past work history includes a medical transcription business. Claimant also transcribed medical records for a medical practice as an independent contractor.

12. 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 CRF 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 applicants 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 F2d 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 anxiety, panic disorder and major depression severe. The Claimant has alleged physical disabling impairments due to hyperadrenergic state (POTS).

A summary of the Claimant's medical evidence follows.

The Claimant has had several Consultative Psychiatric Examinations which all support mental impairments ranging from severe anxiety and major depression. Her current treatment is weekly and the GAF score given by her treating doctor is 40.

In [redacted] a then treating psychiatrist who had seen the Claimant since [redacted] evaluated the Claimant and provided a Psychiatric Examination Report. The Claimant was noted a very anxious, pale and blotchy. Current medications were Zoloft, Ativan, Atenolol and Subutex. The Claimant's mental status examiner reported that she was anxious, depressed though polite and presented with intermittent hopelessness. Diagnosis was major depressive disorder, recurrent and severe, panic disorder, noted dysautomonia, severe and frequent orthostasis, GAF was 45.

A Mental Residual Functional Capacity Assessment by the same Psychiatrist prepared in conjunction with the Psych report noted Claimant was markedly limited in ability to understand and remember detailed instructions. With regard to sustained concentration and persistence the Claimant was markedly limited in her ability to carry out detailed instructions, and ability to maintain attention and concentration for extended periods; the ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances, ability to sustain ordinary routine without supervision; ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. As regards Social Interaction, the Claimant was markedly limited in ability to interact appropriately with the general public, ability to accept instructions and respond appropriately to criticism from supervisors. As regard Adaptation the Claimant was markedly limited in all categories, including ability to be aware of normal hazards, respond appropriately to change in work setting, travel in unfamiliar places and ability to set goals and make plans independently.

A Medical Examination report prepared in [redacted] noted medications including Ativan, Subutex and Verapamil The examiner who had seen the Claimant before noted anxious, shaking and quivering voice, and thin. Noted tremors and writing was not smooth.

A Consultative Psychiatric Examination performed on [redacted] found a diagnosis of Major Depressive Disorder Recurrent Severe without psychotic features, panic disorder without agoraphobia, and generalized anxiety disorder. The GAF was 55. The

medical source statement noted based on her performance today she appears capable of managing her income. Claimant would have difficulty maintaining standards of behavior and safety issues due to her current issues with depression and panic attacks. She would not appear capable of maintaining standards of work behaviors and her ability to communicate is currently questionable. Continued interaction with the mental health system is recommended. A therapist is also recommended for this Claimant who has numerous issues that have added to her depression.

A consultative physical examination was conducted [redacted] The examiner noted that the Claimant was seen due to hypertension, tremors, migraine headaches, dysautonomia and positional orthostatic tachycardia. The examiner noted constant shaking and noted a slight speech problem, with change in her voice with a raspy voice. The neurologic exam noted movement of her head, hands and arms at rest, constantly nervous and shaking due to this disorder. The Impression was history of labile hypertensions, good control. Tremors and dysautonomia. Migraine headaches. POTS or Positional Orthostatic Tachycardia. Medical Source Statement: Based upon the history and the exam, the examinee has chronic conditions for which she needs long term ongoing care. She has a positional disorder causing abnormality of her heart rate, and will need long term care for these problems. She would have difficulty with prolonged standing, stooping, squatting, lifting and bending causing an exacerbation of her problems. She presented with a record dated [redacted] documenting her panic disorder as well as her tachycardia.

A mental status examination was performed on [redacted] after Claimant's release from hospitalization and a stay at Harbor Oaks Hospital for an extended 6 week stay due to mental instability. The mental status exam reveals a female who was quite restless during the interview and commented that she can never stop pacing and is extremely tense and anxious. Thinking and speech was somewhat fragmented, answering questions and then talking about other things in succession that were not associated. Her memory and orientation appeared grossly intact. No hallucinations, delusion or illusions. At one point had some tightness of breath and difficulty with talking. Her mood was quite agitated. The Diagnosis was psychotic disorder, factitious disorder NOS with physical and/or psychotic signs and symptoms, rule out an eating disorder, active, and opioid/amphetamine/cocaine withdrawal rule out. The GAF score was 40.

In a progress note [redacted] the Claimant was rocking her body and head to calm herself and grieving her loss of her business, her friends and a long term relationship.

Another mental status exam was conducted on [redacted] with diagnosis of psychotic disorder, factitious disorder rule out. GAF was 40.

A progress note dated [redacted] noted very anxious, not leaving her bed, racing thoughts and not seeing any difference with current medications. Claimant also had a medication review on February 26, 2013 at which time the GAF score was the same as was the diagnosis. The Claimant reported that Subutex and Ativan helped her but her family does not support the use of Ativan and Subutex and will not assist her in paying for the medications. The notes indicated Claimant was tangential at times and focused on Subutex and Ativan as only drugs that were helpful for her depression. Reported anxiety and insomnia.

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 CFR, Part 404. The Claimant asserts mental disabling impairments due to Bipolar Disorder, Depression and Obsessive Compulsive Disorder.

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 this disorder 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 was also considered

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 for anxiety, depression and panic disorder. Medical records document a pervasive loss of interest in activities, episodes of extreme anxiety, and extreme depression and marked restrictions of social functioning and difficulties maintaining concentration, persistence or pace as well as adaption. The Claimant has been treating consistently with breaks only due to lack of insurance coverage and sees her Psychiatrist monthly and participates in therapy. Her GAF scores have ranged from 25 to 40 which is her current score. The Claimant credibly testified that she suffers from emotional problems and that she suffers sleep loss, and loss of appetite and often has difficulty getting out of bed. The Claimant also continues to have poor concentration and memory problems. The Claimant's social interactions are limited to her family. Claimant has no friends and tends to isolate. The Claimant has noted poor personal hygiene and loses track of her personal care. The Claimant testified credibly that cooking, cleaning and grocery shopping are only done a little bit.

The records and evaluations of the Claimant including the consultative examination indicate that the Claimant will need continuing treatment and is as of [redacted] markedly limited in maintaining social functioning.

A thorough consultative psychiatric examination summarized above clearly noted the Claimant's prognosis was guarded and that Claimant's ability to withstand stress and pressures associated with day to day work is markedly impaired, social interaction, sustained concentration and pace. The DHS 49 E summarized in detail above also found the Claimant markedly impaired in areas of social functioning, working with others and being distracted by them, and was markedly limited in all areas of Social Interaction. During the examination the Claimant spoke in a shaky voice and exhibited tremors. The Claimant also credibly testified that she suffers daily from headaches. The medical evidence did contain notation of possible opioid addiction; however, the drug testing noted no continued use of methadone which was given to the Claimant by prescription or Subutex a drug also medically prescribed by her doctor. It is specifically determined that drugs are not material as the Claimant has suffered from anxiety and panic attacks since college and all of the drugs in question were prescribed by the Claimant's physicians and Claimant no longer takes either of these drugs. SSR 13 -2p, Question 1. .

As a result, the medical records and testimony demonstrate clearly that the Claimant has marked restrictions in daily living and social functioning and adaptation and concentration persistence and pace and has a GAF score which fluctuates but on average is low. Deference was also accorded to the medical opinion of the Claimant's treating psychiatrist and the consultative examinations. 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 1, and B1-3 Depression. 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 program. In light of this Decision the Claimant may consider applying for State Disability Assistance Program.

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.

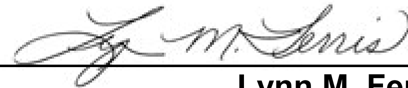
Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the June 4, 2012 application for MA-P and retro MA-P and SDA to determine the Claimant's eligibility and determine if all other non-medical criteria are met and inform the Claimant and her AHR of the determination in accordance with Department policy.

3. The Department shall issue an SDA supplement to the Claimant if otherwise eligible in accordance with Department policy.

4. The Department shall review the Claimant's continued eligibility in July 2014 in accordance with department policy.



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

Date Signed: July 3, 2013

Date Mailed: July 3, 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: