

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

IN THE MATTER OF:



Reg. No.: 2013-29841
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: May 29, 2013
County: Genesee-02

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, an in-person hearing was commenced on May 29, 2013, at the Genesee County DHS office. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

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 October 11, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On January 18, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA indicating she was capable of performing other work. SDA was denied for lack of duration. (Dept Ex. A, pp 1-2).
- (3) On January 28, 2013, the department caseworker sent Claimant notice that her application was denied.
- (4) On February 8, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On April 29, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled indicating she was capable of performing a wide range of unskilled work. (Depart Ex. B, pp 1-2).
- (6) Claimant has a history of depression, migraines, posttraumatic stress disorder (PTSD), kidney stones, kidney infections, herniated discs, cervicalgia, degenerative disc disease, and endometriosis.
- (7) On March 8, 2012, Claimant underwent a psychological evaluation by the [REDACTED]. Claimant listed her impairments as herniated disc, neck and hip problems, kidney stones, rheumatoid arthritis, COPD, stomach problems, migraines, attention deficit disorder, and depression. She seemed to be in contact with reality throughout the evaluation. There was no significant evidence of hallucinations, delusions, persecutions, obsessions, thoughts controlled by others or unusual powers. Her affect was appropriate to her mood. Her emotional state appeared to be melancholy. The psychologist opined that Claimant's mental abilities to understand, attend to, remember, and carry out instructions are mildly impaired. Her abilities to respond appropriately to coworkers and supervision and to adapt to change and stress in the workplace are moderately impaired. Diagnosis: Axis I: Depressive disorder; Anxiety disorder; History of Alcohol, Cannabis, and Vicodin abuse; Axis II: Cluster B Personality Features; Axis III: Herniated disc, neck and hip problems; kidney stones, rheumatoid arthritis, COPD, stomach problems, and migraines (per history); Axis V: GAF=56. Prognosis is guarded. (Depart Ex. A, pp 27-31).
- (8) On May 10, 2012, Claimant's therapist completed a psychological evaluation. Claimant has to be driven to appointments. Since her accident in 2002 she has had physical and emotional problems. She has been hospitalized three times and is unable to work. She is currently in individual outpatient counseling. She is depressed, has difficulty concentrating, loss of interest, suicidal thoughts, irritable and agitated. Diagnosis: Axis I: Bipolar Disorder; Depressed: Axis III: Herniated disc in neck; Endometriosis; Chronic pain; Axis V: GAF=52. According to her Mental Residual Functional Capacity Assessment, Claimant was markedly limited in her ability to maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; sustain an ordinary routine without supervision; work in coordination with or proximity to others without being distracted by them; make simple work-related decisions, 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; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting

behavioral extremes; travel in unfamiliar places or use public transportation and to set realistic goals or make plans independently of others. (Depart Ex. A, pp 21-25).

- (9) On August 18, 2012, Claimant underwent a medical examination on behalf of the department. Claimant was diagnosed with depression, anxiety, migraines and attention deficit disorder. The examining physician found Claimant's condition was stable and she could meet her own needs in the home. (Dept Ex. A, pp 11-12).
- (10) On November 28, 2012, Claimant underwent a psychological evaluation on behalf of the department. Her demonstrated affect was mildly anxious with reports of chronic depression secondary to sexual abuse as a child. She reported current passive suicidal feelings with an attempt 5-6 years ago and multiple psychiatric hospitalizations, most recently 7 years ago. She has problems sleeping due to night terrors and may average 4-5 hours of broken sleep per night with daily napping of 1-2 hours. She described her general mood as depressed secondary to sexual molestation as a child with this depression becoming worse following a serious accident in 2002. She reported passive suicidal feelings with a previous attempt to cut her wrists 5-6 years ago. She has undergone 3 psychiatric hospitalizations with her first at age 13. As a teen she was involved in court-ordered treatment at Community Mental Health for a year. She was struck as a pedestrian by a drunk driver in 2002 and was hospitalized 13 days. She suffered road burns and spent 9 days in the burn unit. She also suffered herniated discs and desiccation in her right hip with subsequent development of arthritis. She takes Methadone and Soma for pain as well as Phenergan for nausea and Depakote for daily migraine headaches. She also has a history of kidney infections as well as some 7 surgeries for endometriosis. Diagnosis: Axis I: Bipolar Disorder (by history) with anxiety and depression; Axis II: History of alcohol abuse and drug dependency; Axis III: Herniated discs, Hip desiccation; Arthritis; Migraine headaches, Nausea, Endometriosis; History of Kidney Infections and Kidney Stones; Axis V: GAF=47. The psychologist opined that Claimant would need assistance in managing any benefits due to her history of alcohol abuse and drug dependency. The psychologist also recommended outpatient psychiatric treatment designed to reduce psychiatric symptoms, stabilize daily functioning and address substance abuse issues. Ongoing use of psychotropic medication will be an essential component of this treatment. Such treatment will be a necessary adjunct to any successful long-term attempt at vocational rehabilitation. (Dept Ex. A, pp 3-5).
- (11) On February 25, 2013, Claimant's treating physician diagnosed Claimant with anxiety, depression, ADD, migraines, and agoraphobia. The physician stated that she has herniated discs at C5-C6 for which she may

need surgery but she does not have medical insurance. He opined that Claimant was not capable of any sustained activity at this time, physically or emotionally. (Claimant Ex. pp 1-9).

- (12) Claimant is a 34 year old woman whose birthday is [REDACTED] Claimant is 5'4" tall and weighs 134 lbs. Claimant completed the tenth grade.
- (13) Claimant was appealing the denial of 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).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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-#12 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;

In this case, Claimant credibly testified that she uses a shower chair due to the dizziness she experiences in the shower. She is in chronic pain and has migraine headaches once or twice a week. Her treating physician opines that Claimant is currently not capable of any sustained activity at this time, physically or emotionally. An independent psychologist opined that before any long-term attempt at vocational rehabilitation can be established, she would need outpatient psychiatric treatment designed to reduce psychiatric symptoms, stabilize daily functioning and address substance abuse issues. Ongoing use of psychotropic medication will be an essential component of this treatment. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA/Retro-MA and SDA programs. Consequently, the department's denial of her October 11, 2012, 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 MA/Retro-MA and SDA eligibility purposes.

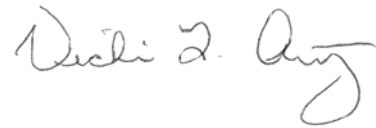
Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

- 1. The department shall process Claimant's October 11, 2012, 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 June, 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.



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

Date Signed: June 14, 2013

Date Mailed: June 14, 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,

2013-29841/VLA

- 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:

