

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-20310
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 13, 2013
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a hearing was held on March 13, 2013, at Detroit, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of the Claimant were the Claimant and her Authorized Representative, ██████████. Participants on behalf of the Department of Human Services (Department) were ██████████, Medical Contact Worker.

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) program?

FINDINGS OF FACT

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

1. On February 3, 2012, Claimant applied for MA benefits with the Department. Her application requested MA retroactive to November 1, 2011.
2. On March 22, 2012, the Department denied the application.
3. On January 2, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is fifty-three years old (██████████), has a high-school diploma.

5. Claimant last worked in 2013 as a babysitter parttime. Claimant has no other relevant work experience. Claimant's relevant work history consists exclusively of unskilled, light-exertional work activities.
6. Claimant has a history of shortness of breath, back pain, overweight body habitus, and depression. Her disability onset dates are childhood (depression) and 1989 (physical impairments).
7. Claimant was hospitalized in 2011 as a result of cellulitis and abscess. The discharge diagnosis was stable condition.
8. Claimant currently suffers from shortness of breath, back pain, overweight body habitus, and depression.
9. Claimant is severely limited in the basic living skills of sitting, standing, walking, lifting and carrying. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the whole record, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason (select ONE):

1. Claimant's physical/mental impairment meets a Federal SSI Listing of Impairment or its equivalent.

State the Listing of Impairment:

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;

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. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 12.04; see also, 20 CFR 404.1520(d) (asterisks added to indicate the categories that are present in Claimant's case).

The following is a five-step examination of Claimant's eligibility for Medicaid. The State of Michigan Department of Human Services is required by the U.S. Code of Federal Regulations (CFR) to use the U.S. Social Security Act Title XVI Supplemental Security Income five-step test, for evaluating applicants for the Michigan Medicaid disability program. 20 CFR 416.905, 404.1505; 416.920; 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked fulltime in the past fifteen years. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not

engaged in substantial gainful activity. 20 CFR 404.1520(b), 416.920(b); Dept. Exh. 1, pp. 57, 59.

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset dates are childhood (mental impairment) and 1989 (physical impairments). Claimant testified that she has been depressed since childhood. She stated she has daily crying spells, and hot flashes, although she is premenopausal. In 2011 Claimant had suicidal thoughts, which she reported at [REDACTED]. She was examined by a psychiatrist and diagnosed with depression. In December, 2012, she began outpatient therapy at Development Centers Inc. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, pp. 65, 69.

Based on this information of record, and all of the evidence in this case taken as a whole, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second eligibility requirement. 20 CFR 404.1520(c), 404.1521, 416.920(c).

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if Claimant's impairment is the same as, or equivalent to, an impairment in the federal Listing of Impairments, found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case it is found and determined that Claimant's impairment meets or is the equivalent of Listing 12.04, Affective Disorders, and its subparts A and B. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 12.04; see *also*, 20 CFR 404.1520(d).

In order to establish this mental impairment, Claimant must first demonstrate that she has this diagnosis. Claimant was diagnosed with depression by two psychiatrists. On November 12, 2011, [REDACTED], [REDACTED], [REDACTED], diagnosed Claimant with depression while she was in the hospital with an abscess condition. During treatment for the abscess Claimant reported that she wanted to kill herself. She was given a 1:1 sitter, and was seen in the [REDACTED]. Dr. [REDACTED] diagnosed depression, and at her request gave her a referral to a social worker to assist in finding outpatient psychotherapy for her. Dept. Exh. 1, pp. 65, 69.

In December, 2012, Claimant began psychiatric and psychological treatment at [REDACTED] psychiatry, diagnosed major depressive disorder and prescribed Zoloft. Clmt. Exh. A, p. 11. Claimant testified she sees [REDACTED] and a psychotherapist, each once a month.

Based on this evidence and all of the evidence in this case considered as a whole, it is found and determined that Claimant has major depressive disorder.

Secondly, the next step is to determine if at least four of the Listing 12.04A1 features are present. Listing of Impairment 12.04A1. Having carefully considered all of the testimony and documents in this case, it is found and determined that Claimant

presents five of the nine signs and symptoms listed in Listing 12.04A1, those being (1) anhedonia or pervasive loss of interest in almost all activities (subsection a), (2) sleep disturbance (subsection c), (3) feelings of guilt or worthlessness (subsection f), (4) difficulty concentrating or thinking (subsection g) and (5) thoughts of suicide (subsection h). Dept. Exh. 1, pp. 65, 69, 73, 77, 79; Clmt. Exh. A, pp. 2, 5.

In addition to the documentary evidence on these requirements, Claimant gave credible and un rebutted testimony that she has been depressed since childhood. She has daily crying spells, and she has hot flashes which are not related to menopause (she is premenopausal). She is afraid of her family. She goes out of the home only to pay bills and buy food. When asked if she felt isolated, she replied that no, she likes being in the house.

Claimant gave credible and un rebutted testimony that she sought treatment for sleep problems and was prescribed sleep medication. She spends her daytime sitting in the kitchen watching television. Her weight fluctuates, and she gained fifty lbs. in 2012.

Having carefully considered all of this evidence and all of the evidence in this case as well, in its entirety, it is found and determined that Claimant has established that she has five of nine signs and symptoms of an affective disorder as defined in Listing 12.04A1. These five signs and symptoms appear in her medical records, her answers to Department questionnaires, and her testimony at the hearing.

Next, the requirements of subsection B of Listing 12.04 shall be considered. This subsection requires a showing of at least two of four difficulties present as a result of the behaviors present from subsection A above. Listing of Impairment 12.04B.

Having considered all of the evidence in this case in its entirety, it is found and determined that Claimant has two of the four difficulties listed: she has a marked restriction of the activities of daily living (subsection B1), and, she has marked difficulties in maintaining social functioning (subsection B2).

Regarding activities of daily living, in response to a Department questionnaire, Claimant wrote, "Don't want to do anything (sic) just sit in the house. Out of sight out of mind....I love walking, cooking, etc., and miss being outdoors and doing everything. Now I just want to sit in front of the TV...I was a (sic) outdoors person, swimming, cooking, playing, now getting a whole night of sleep makes me happy and going out doors (sic) is a pain! Pay bills, buy food and then hurry back in the house!" Dept. Exh. 1, p. 77.

Regarding her social functioning, in response to a question whether she visits with friends or family, Claimant checked the "No" box, and, gave no further details in the space provided. *Id.*

This evidence, and all of the evidence in this case considered as a whole, supports a conclusion that Claimant has marked restrictions in her activities of daily living, and in maintaining social functioning, as required in Listing subsections B1 and B2. Therefore,

it is found and determined that Claimant has proved that she has marked restrictions in her activities as described in the Listing subsections.

In summary, having carefully reviewed all of the evidence in this case in its entirety, it is found and determined that Claimant's mental impairment meets, or is equivalent to, the requirements of Listing of Impairment 12.04, Affective Disorders. Claimant therefore has established eligibility for Medicaid based on her mental impairment. Listing of Impairment 12.04.

As Claimant is found by the undersigned to be eligible for MA based solely on a mental impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence. 20 CFR 416.905, 404.1505; 416.920.

In conclusion, based on the Findings of Fact and Conclusions of Law above, the Claimant is found to be

NOT DISABLED DISABLED

for purposes of the MA program.

The Department's denial of MA benefits to Claimant is

AFFIRMED REVERSED

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant must also be found disabled for purposes of SDA benefits, should she apply for them.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record finds that Claimant

DOES NOT MEET MEETS

the definition of medically disabled under the Medical Assistance program as of the onset date of disability of childhood.

The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT SHALL BEGIN THE PROCESS OF THE FOLLOWING STEPS WITHIN TEN DAYS OF THE MAILING OF THIS ORDER:

1. Initiate processing of Claimant's February 3, 2012, application, to determine if all nonmedical eligibility criteria for MA benefits have been met.
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy.
3. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate procedures to schedule a redetermination date for review of Claimant's continued eligibility for program benefits in August, 2014.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 23, 2013

Date Mailed: July 24, 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:

2013-20310/JL

- 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

JL/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]