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

#### IN THE MATTER OF:



Reg. No.: 2013-37063 Issue No.: 2009; 4031

Case No.: Hearing Date:

September 4, 2013

County: Oakland-02

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

### **HEARING DECISION**

This matter is before the undersigned Ad request for a hearing made pursuant to Mi chigan Compiled Laws 400.9 and 400.37, which gov ern the administrative hearing a nd appeal process. After due notice, a telephone hearing was commenced on September 4, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist

During the hearing, Claimant wa ived the time period for the i ssuance 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 October 10, 2013, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

#### ISSUE

Did the Department of Human Services (DHS) pr operly deny Claimant 's Medic al Assistance (MA), Retro-MA and State Disability Assistance (SDA) application?

#### FINDINGS OF FACT

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

- On November 20, 2012, Claimant filed an applic ation for MA/Retro-MA and SDA benefits alleging disability.
- 2. On February 1, 2013, the Medical Review Team (MRT) denied Claimant's application for MA/Retro -MA indicating she was capable of performing other work. SDA was denied due to lack of duration. (Depart Ex. A, p p 28-29).
- On February 4, 2013, the department caseworker sent Claimant notic e that her application for MA/Retro-MA and SDA had been denied.

- 4. On March 20, 2013, Claim ant filed a request for a hearing to contest the department's negative action.
- 5. On May 31, 2013, t he State Hearing Review T eam (SHRT) found Claimant was not disabled and r etained the capacity to perform medium exertional tasks of a simple and repetitive nature. (Depart Ex. B, pp 1-2).
- 6. Claimant had applied for Social Security disability benefits at the time of the hearing.
- 7. Claimant is a 28 year old woman whos e birthday is Claimant is 5'1" tall and weighs 340 lbs.
- 8. Claimant does not have an alcohol, drug or nicotine problem.
- 9. Claimant has a driver's license and is able to drive.
- 10. Claimant has a college education.
- 11. Claimant is not currently working. Claimant last worked in May, 2012.
- 12. Claimant alleges dis ability on the basis of depression, mild hypertension and morbid obesity.
- 13. Claimant's impairments have lasted, or are expected to last, continuous ly for a period of twelve months or longer.
- 14. Claimant's complaints and allegat ions concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, 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**

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) 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 Bridges Reference Manual (RFT).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies are found in the Bridge es Administrative Manual (BAM), the Bridges Elig ibility Manual (B EM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

(b) A person with a phy sical 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.

In order to receive MA benefits based upon disa bility or blindness, claimant must be disabled or blind as defined in T itle XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Mi chigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

# "Disability" is:

... the inability to do any subs tantial 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 federal regulations require t hat several considerations be analyzed in s equential order:

... We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further. 20 CF R 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

 If you are working and the work you are doing is substantial gainful activity, we will find that you are not dis abled regardless of your medical condition or your age, education, and work experienc e. 20 CFR 416.920(b). If no, the analysis continues to Step 2.

- 2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in deat h? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
- 3. Does the impairment appear on a special Listing of Impairments or are the clie nt's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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 analys is continues to Step 5. Sections 200.00-204.00(f)?
- 5. Does the client hav e the Residual Func tional 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? This step consi ders the residual functiona I capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is a pproved. 20 CFR 416.920(g).

At application Claimant has the burden of proof pursuant to:

... You must provide medical evidence showing that you have an im pairment(s) and how seve re it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

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 ultrasounds, X-rays);

(4) Diagnosis (statement of di sease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not al one establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment. 20 CFR 416.929(a). The medical evidence must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913( e). You can only be found dis abled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demons trable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analys is herein, Claimant is not ine ligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de min imus* standard. Ruling a ny ambiguities in Claimant's favor, this Administrative Law Judge (ALJ) finds that Claimant meets both. The analysis continues.

The third step of the analysis looks at whether an individual meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). Claimant does not. The analys is continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Claimant in the past. 20 CFR 416.920(f). Claimant has a history of less than gainful employment. As such, there is no past work for Claimant to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applie s the biographical data of the applic ant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Hum an Services*, 735 F2d 962 (6 th Cir, 1984). At that point, the burden of proof is on the state to prove by substant ial evidence that Claim ant has the residual functional capacity for substantial gainful activity.

Claimant underwent an independent psy chological eval uation on behalf of the department. Diagnosis: Axis I: Major depression, severe; Axis II: Obesity; Axis IV: Economic, healthcare access, soci al environment, support; Axis V: Current

GAF=41. According to the DSM-IV, 4 <sup>th</sup> Ed., a GAF of 49 indic ates serious symptoms (suicidal ideation, s evere obs essional rit uals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job, cannot work).

According to her Mental Residual Func tional Capacity Assessment, Claimant was markedly limited in her ability to reme mber locations and wo rk-like procedures; understand and remember one or two-step instructions; understand and r emember detailed instructions; carry out detailed instructions: maintain attention and concentration for extended periods; perform ac tivities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; sustain an ordinary routine wit hout supervision; wor k in coordination with or pr oximity to others without being distracted by them; make simple wo rk-related decis ions, complete a norma I workday and worksheet without interruptions from psychologically based symptoms and unreasonable number and length of rest to perform at a consistent pace without an periods; interact appropriately with the general public, ask simple questions or request assistance, accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; maintain s ocially appropriate be havior and to adh ere to bas ic standards of neatness and cleanliness; res pond appropriately to change in the work setting; to be aware of normal hazards and take appropriate precautions and to set realistic goals or make plans independently of others.

The examining psychologist also opined that Claimant is withdra wn and isolative. She is anxious, often despairing. She does not attend to her hygien e or her weight ga in as needed. She has little interaction with her family due to her withdrawal.

Claimant is 28 years old, with a college educ ation. Claimant's medical records are consistent with her testimony that she is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See So cial Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

The Department has failed to provide vocational e vidence which establishes that Claimant has the residual func tional capacity for substantia I gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Clai mant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

A person is consider ed disabled for purposes of SDA if the person has a physical or mental impairment which meet s federal SSI disability standar ds for at least 90 days. Receipt of SSI or RSDI benefit s based upon disability or blin dness or the receipt of MA benefits based upon disability or blindness automatically qualifie s an individual as disabled for purposes of the SDA program. Ot her specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of SDA benefits.

# **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof 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 proces s Claimant's November 20, 2012, MA/Retro-MA and SDA applic ation, and s hall 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 rev iew Claimant's medica I cond ition for improvement in October, 2014, unless her Social Sec urity 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

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Date Signed: October 22, 2013

Date Mailed: October 22, 2013

**NOTICE**: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical erro r, 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: