

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

IN THE MATTER OF:

████████████████████
██
██

Reg. No.: 2013-18881
Issue Nos.: 2009, 4031
Case No.: ██████████
Hearing Date: May 6, 2013
County: Oakland (03)

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 May 6, 2013, at Walled Lake, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of the Claimant were Claimant's Authorized Representative, ██████████, ██████████ Defender Assoc. Participants on behalf of the Department of Human Services (Department) were ██████████, Assistance Payments Supervisor.

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) programs?

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 September 21, 2012, Claimant applied for MA and SDA benefits. The application requested MA retroactive to June 1, 2012.
2. On October 10, 2012 and November 26, 2012, the Department denied the application.
3. On December 6, 2012, Claimant filed a request for an Administrative Hearing.

4. Claimant, who is forty-eight years old (DOB 10/5/1964), has a high school diploma, an Associates Degree, and she has Patient Care Technician, Certified Nurse Aid, and CPR Licenses.
5. Claimant last worked on May 25, 2012 as a Patient Care Technician. Claimant also performed relevant work as a home health care aide and at a robotics manufacturing company. Claimant's relevant work history consists exclusively of unskilled and semi-skilled, heavy-exertional work activities.
6. Claimant has a history of major depressive disorder, bilateral carpal tunnel syndrome, bilateral coronary eye disease and glaucoma, cervical spine stenosis, bilateral knee osteoarthritis, and back and leg spasms. The disability onset date of her mental impairment is 1994.
7. Claimant was hospitalized in the psychiatric unit in 2006 and 2008 in relation to attempted overdoses on sleeping pills. She was also hospitalized or seen in the emergency department three times in 2012 as a result of asthma, leg pain and leg injury. The discharge diagnosis was in stable condition (2012).
8. Claimant currently suffers from chronic major depressive disorder, bilateral carpal tunnel syndrome, bilateral coronary eye disease and glaucoma, cervical spine stenosis, bilateral knee osteoarthritis, and back and leg spasms.
9. Claimant is severely limited in the basic mental skills of understanding, memory, sustained concentration, persistence, social interaction and adaptation. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her mental impairment 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).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and 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.

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 (asterisks indicate that these factors 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 since May 25, 2012, more than one year ago. 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. 9, 45.

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 date is 1994, when she was thirty years old and her father died. In 1994 Claimant began isolating herself from people, sleeping a lot, and not doing anything. In 2005, she lost her job and suffered from carpal tunnel syndrome and back and leg pain. Also in 2005, she began treating regularly with Easter Seals, where she continues in treatment to the present time. In 2006 and 2008 she attempted suicide by overdosing on sleeping pills, and was hospitalized in the psychiatric unit. Dept. Exh. 1, pp. 14, 16.

Claimant's 2012 diagnosis was dysthymic disorder and post-traumatic stress disorder, but in 2013 she developed hallucinations and her diagnoses were changed to post-traumatic stress disorder and major depressive disorder, recurrent, severe, without psychosis. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, pp. 14-16, 29-30, 36; Clmt. Exh. A, pp. 13.

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 two of its subparts, A1 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).

First, in order to establish this Listing, there must be a diagnosis of the impairment. Claimant was diagnosed in 2012 and again in 2013 by her psychiatrist, Kodakkatu Surendran-Nair (██████████), M.D., Psychiatry. ██████████ first saw Claimant in 2012 and diagnosed dysthymic disorder and post-traumatic stress disorder. In 2013, based on changes in Claimant's symptoms, ██████████ changed the diagnosis to major depressive

disorder, recurrent, severe, without psychosis. Considering this credible and unrebutted evidence, and all of the evidence in this case as a whole, it is found and determined that Claimant has a depressive syndrome, or its equivalent, as described in Listing 12.04. Listing 12.04A1; Dept. Exh. 1, p. 15; Clmt. Exh. A, p. 13.

Next it must be determined whether Claimant has at least four of the features listed in Listing subpart A1 (see above). At the hearing Claimant gave credible and unrebutted testimony regarding six of nine listed features of depressive syndrome: anhedonia or pervasive loss of interest, sleep disturbance, psychomotor agitation, difficulty concentrating or thinking, thoughts of suicide, and hallucinations. Claimant's testimony also was consistent with the information she provided to health care providers, as shown in the medical records.

Also, in the medical records and in Claimant's written answers to Department questionnaires, the remaining three features were demonstrated: appetite disturbance with change in weight, decreased energy, and feelings of guilt or worthlessness. Dept. Exh. 1, pp. 14, 16, 58. Therefore in this case it is found and determined that Claimant has proved she has all nine features of a depressive syndrome or their equivalent, as required in subpart A1 of Listing 12.04. Listing of Impairment 12.04.

Last, it must be determined whether as a result of depressive syndrome, Claimant has experienced severe limitations of her life activity. This must be shown by establishing that Claimant experiences two of the four limitations listed in subpart B of Listing 12.04 (see above).

Having considered all of the evidence in this case in its entirety, it is found and determined that Claimant demonstrates the first and third of the four limitations of subpart B: she has marked restriction of the activities of daily living, and, she has marked difficulties in maintaining concentration, persistence or pace. Listing of Impairment 12.04B.

First, with regard to the activities of daily living, Claimant answered a Department questionnaire, stating that it takes her "hours at a time" to go shopping because, "I get anxious/stressed out." She responded "Yes" to a Department question regarding changes in her hobbies and activities, stating, "I feel hopelessness, disinterest, anxiety, sad, sleepy." She stated that although people do come to visit her, the length of the visit "depend (sic) on my mood." In response to a question about what she does when friends visit, she wrote "The (sic) help/encourage me to do daily activities." She does not go out to visit anyone. Listing of Impairment 12.04B; Dept. Exh. 1, pp. 59-61.

Second, with regard to marked difficulties in maintaining concentration, Claimant gave credible and unrebutted testimony at the hearing that her concentration is poor, and that it affects her sleep. She testified that her auditory and visual hallucinations hinder her rest and concentration, and that the hallucinations have recently increased. She testified that she cannot remember and repeat directions that are given to her, and this

lack of concentration causes her severe agitation. She cannot remember appointments. When she was working, she sometimes could not follow through with assigned tasks.

In addition to Claimant's testimony, ██████ submitted a "Medical Source Statement of Ability To Do Work-Related Activities," dated May 2, 2013. This document assesses Claimant ability to do work-related activities on a sustained basis, meaning eight hours a day, five days a week. ██████ assessed her as mildly limited in her ability to understand, remember and carry out simple instructions. He assessed her as moderately limited in the ability to make judgments about simple work-related decisions, the ability to interact appropriately with the public and with co-workers, and to respond appropriately to usual work situations and to changes in a routine work setting. He assessed her as markedly limited in the ability to make judgments on complex work-related decisions, and the ability to interact appropriately with supervisors. He rated her as extremely limited in the ability to understand, remember and carry out complex instructions. ██████ written comments were, "Pt is very depressed and has poor concentration. Because of poor concentration she is not able to perform duties." Clmt. Exh. A, pp. 1-3.

Having considered Claimant's testimony, the evaluation of ██████, and all of the evidence in this case considered in its entirety, it is found and determined that Claimant has demonstrated that she has marked difficulty in maintaining concentration, or its equivalent. Claimant therefore has demonstrated that she has limitations in two of four categories of activity as required by Listing 12.04, subpart B. Listing of Impairment 12.04.

This completes the third step of the Medicaid evaluation, and the Claimant has proved by a preponderance of the evidence that she has a depressive syndrome or its equivalent, of the severity required by Listing of Impairment 12.04.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the severity 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.

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. Claimant's disability onset date is 1994.

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 Bridges Eligibility Manual (BEM) 261 (2012). 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 and State Disability Assistance programs as of the onset date of disability of 1994.

The Department's decision is

AFFIRMED **REVERSED**

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN TEN DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate processing of Claimant's September 21, 2012 MA and SDA application, as well as her retroactive MA application to determine if all nonmedical eligibility criteria for MA and SDA benefits have been met. Claimant's onset date is 1994.
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA and SDA benefits to Claimant, including any retroactive 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 September, 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: August 20, 2013

Date Mailed: August 20, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

JL/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]