

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201323616
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 29, 2013
County: Wayne DHS (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on April 29, 2013, from Taylor, Michigan. Participants included the above-named claimant. [REDACTED], Claimant's mother, testified on behalf of Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the basis that Claimant is not a disabled individual.

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 2/9/12, Claimant applied for MA benefits (see Exhibits 88-89), including retroactive MA benefits from 11/2011 (see Exhibits 86-87).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/15/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On 10/17/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 78-79) informing Claimant of the denial.

5. On 1/10/13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 77).
6. On 3/19/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.
7. On 4/29/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A81) at the hearing.
9. The new medical documents were forwarded to SHRT.
10. On 7/3/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'3 ½" and weight of 120 pounds.
12. Claimant has a history of heroin abuse though she stopped using approximately 10/2011.
13. Claimant's highest education year completed was the 12th grade.
14. As of the date of the administrative hearing, Claimant had no medical coverage, but her mother assisted with the cost of prescriptions.
15. Claimant alleged disability based on impairments and issues including bipolar disorder and arm fatigue.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (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).

It should be noted that Claimant's AHR's hearing request noted that special arrangements were necessary; specifically, an in-person hearing was requested. The hearing was conducted in accordance with Claimant's AHR's request.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential

health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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 CFR 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 income limit is \$1010/month.

Claimant testified that she performed employment for 20 hours per week and \$8.50/hour since requesting MA benefits. Claimant's gross employment income amounts to \$170/week. The income is less than the presumptive SGA limit. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v*

Bowen, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

Documents (Exhibits 32-51) regarding a hospitalization from [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, shortness of breath and fever. It was noted that an abdomen ultrasound was unremarkable. It was noted that a CT of the abdomen was unremarkable, though it was noted that findings were suspicious of an infectious or inflammatory process. It was noted that discharge diagnoses included: fever, drug abuse and generalized abdominal pain.

Documents (Exhibits 19-31) regarding a hospitalization from [REDACTED] were presented. It was noted that Claimant presented with complaints of high fever and chest pain. It was noted that an echocardiogram revealed severe tricuspid regurgitation due to endocarditis. It was noted that the endocarditis was treated for six weeks and a CT scan revealed that septic emboli were resolved at the time of discharge. A discharge diagnosis of right-heart sided endocarditis was noted. It was noted that Claimant was prescribed nine medications and that it was important that Claimant obtained insurance.

A Psychiatric Evaluation (Exhibits 60-63) dated [REDACTED] was presented. Axis I diagnoses of heroin and crack cocaine dependence, bipolar disorder and depression were noted. Claimant's GAF was noted as 50.

On [REDACTED] a letter (Exhibit 68) from Claimant's treating physician noted that Claimant was in jail and that it was imperative that she continue to receive medication.

A psychological consultative examination report (Exhibits 12-17) dated [REDACTED] was presented. It was noted that Claimant reported being diagnosed with depression, anxiety and bipolar disorder when she was 14 or 15 years old. It was noted that Claimant reported a history of cutting. It was noted that Claimant had difficulty dealing with crowds. It was noted that Claimant thought she could work, but her jobs only last 6-12 months. A history of abuse was noted. It was noted that Claimant was kicked out of high school. It was noted that Claimant was medically discharged from the Navy due to

bipolar disorder. It was noted that Claimant was a heroin and cocaine user from the age of 28 until approximately 12/2011. It was noted that Claimant was not able to manage her funds due to manic phases. Axis I diagnoses of bipolar disorder, polysubstance dependence in early remission and anxiety disorder were noted. Claimant's GAF was 60. The examiner opined that Claimant was mildly-to-moderately impaired in relating to others. The examiner opined that Claimant was mildly-to-moderately impaired in the ability to understand, remember and carry out tasks. The examiner opined that Claimant was capable of performing simple tasks and that she could handle more complex tasks. The examiner opined that Claimant's concentration was mildly impaired. The examiner opined that Claimant's ability to deal with stress was moderately-to-significantly impaired.

A supplemental assessment (Exhibits 52-55) signed by Claimant's treating physician on 12/3/12 was presented. It was noted that Claimant presented seeking treatment to help her maintain sobriety from heroin.

Various therapy progress notes (Exhibits A2-A81) from 2012 were presented. The documents were notable for showing: fairly regular attendance by Claimant to therapy, Claimant's continued sobriety and no significant episodes of decompensation (though there were occasions when Claimant displayed anxiety and/or crying spells).

A Psychiatric Evaluation (Exhibits A70-A76) dated [REDACTED] was presented. It was noted that Claimant complained of the following: insomnia, irritability, poor memory, depression causing periods of hygiene neglect, psychomotor agitation, weight gain (40 pounds in 6 months) and anxiety. It was noted that Claimant was sober for one year. Axis I diagnoses of heroin and crack cocaine dependence, bipolar disorder and depression were noted. Claimant's current GAF was noted as 52.

A letter (Exhibit A1) dated [REDACTED] from Claimant's treating physician was presented. It was noted that Claimant was significantly hypothyroid, requiring daily medication. It was noted that Claimant has been clean and sober for one year and that she still has "nearly incapacitating" anxiety and insomnia. It was noted that the physician believed Claimant to be disabled due to bipolar disorder, sleep deprivation and anxiety.

Claimant testified that her wrist movement is restricted due to sarcoidosis. Claimant also testified that she is often short of breath (probably due to lung scar tissue).

Claimant's only previous hospitalization verified treatment for endocarditis, which appears to be well resolved following a six week hospitalization. It was noted that Claimant has hypothyroidism, but it was not well documented how Claimant is exertionally impaired by the diagnosis. It is found that Claimant does not have any severe exertional restrictions.

Claimant testified that she has maintained her sobriety since 11/2011. Claimant testified that she sees a therapist every other week. Claimant testified that she is capable of

working part-time. Claimant testified that she has anxiety attacks every day. Claimant testified that she has agoraphobia and racing thoughts.

It was established that Claimant has regular psychological treatments. Anxiety and depression were well documented in Claimant's complaints and diagnoses. Social dysfunction and poor concentration were documented basic work activities restrictions. Significant restrictions to performing basic work activities were established.

Medical evidence established Claimant's basic work restrictions at least since 11/2011, the date of Claimant's extended hospitalization. Claimant's relatively low GAF of 50 (noted in 2/2012) showed little improvement in 12/2012 (noted as 52). It is found that Claimant established meeting the durational requirement for a severe impairment.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be psychological problems related to depression and/or bipolar disorder. Both disorders are covered by the listing for affective disorders which reads:

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

OR

- C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
 1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Starting first with Part A, established affective disorders symptoms included anhedonia, weight gain, insomnia (i.e. sleep disturbance) and difficulty with concentration. It is found that Claimant meets Part A of the affective disorder listing.

Turning to Part C, it was established that Claimant has an extended history involving affective disorders. Claimant's history was referenced from her teenager years and was noted as a basis for discharge from the armed services. It was noted that Claimant's anxiety is a daily problem and causes her to not perform daily activities. It was noted


that Claimant was treated for a full 12 month period and little progress has been made in Claimant's psychological well-being, most noted by her GAF which was 50 in 2/2012 and 52 in 11/2012. A GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Claimant's GAF was consistent with restrictions noted by a consultative examiner and treating psychologist. The consultative examiner noted that Claimant was moderately-markedly restricted in dealing with stress. Claimant's treating physician noted that Claimant had nearly incapacitating anxiety. Claimant also provided further evidence of her difficulties in dealing with stress by recanting her previous work attempts which showed periods of success, but always limited by part-time and short-term efforts. Based on the presented evidence, it is found that Claimant meets the listing for Listing 12.04 (c)(2). Accordingly, it is found that Claimant is a disabled individual and that DHS erred in denying Claimant's MA benefit application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 2/9/12 including the request for retroactive MA benefits from 11/2011;
- (2) initiate processing of Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
- (3) initiate a supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible to receive MA benefits.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/30/2013

Date Mailed: 7/30/2013

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

CG/hw

cc:

