

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

**IN THE MATTER OF:**



Reg. No.: 2013-40509  
Issue No.: 2009; 4009  
Case No.: [REDACTED]  
Hearing Date: November 27, 2013  
County: St. Clair

**ADMINISTRATIVE LAW JUDGE:** Vicki L. Armstrong

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 27, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

**ISSUE**

Whether the Department properly denied Claimant's application for Medical Assistance (MA), retroactive Medical Assistance (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 December 18, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On March 22, 2013, the Medical Review Team (MRT) denied Claimant's application for MA-P/Retro-MA indicating Claimant was capable of performing other work. SDA for lack of duration. (Dept Ex. A, pp 1-2).
- (3) On March 26, 2013, the department caseworker sent Claimant notice that her application was denied.
- (4) On April 4, 2013, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 1, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled indicating she was capable of performing light work. (Depart Ex. B).
- (6) Claimant has a history of bipolar disorder, depression with psychosis, osteoarthritis, carpal tunnel syndrome and moderate to severe degenerative disc disease.
- (7) In May, 2013, Claimant underwent a full mental status examination. Claimant's chief complaints are carpal tunnel, arthritis, bipolar disorder, depression, degenerative disc disease, mood disorder and degenerative joint disease. Claimant's need or use of assistive devices reportedly included knee braces, bilateral wrist splints and non-prescription lenses. Her communication skills appeared at least mildly impaired. Her speech was over-inclusive, rambling and sometimes hard to follow due to incomplete phrases and sentences. Her weight has reportedly increased approximately 40 pounds in the last 3 months. She reported having difficulty sustaining sleep more than 2-3 hours at a time. She noted that she tends to experience racing thoughts when she attempts to sleep. Claimant indicated that her medications do not appear very beneficial in treating her mental health problems. Claimant reported performing many of her activities of daily living independently, although she reported she sometimes needs a prompt from her sister to take a shower and will sometimes allow a couple of days or more to go by without showering. She reportedly attends 2 groups a week; a dual diagnosis recovery group for people who have problems with alcohol and mental illness and a stress and anger group. Claimant's speech was less organized, less goal directed and more challenging to follow than would be expected for an adult. Although she was able to understand simple directions well, her attention and concentration skills appeared impaired. Her motor activity was mildly restless and she often moved around within her seat. She often paused at length before responding. Her self-esteem appeared low. Clinically, she presented with depression and anxiety symptoms, several ADHD symptoms, some mild expressive speech problems and labile affect. Sufficient history and symptom information was found in support of the following diagnoses: Major Depressive Disorder, Recurrent, Mild; Generalized Anxiety Disorder; ADHD, Combined Type; and Personality Disorder. Claimant's intellectual functioning is estimated to be approximately low average. Her performance on mental status inquiries suggests her attention, concentration and delayed recall skills may be at least mildly impaired, which may make it more challenging for her to retain newly acquired information, complete tasks in a timely fashion and respond to changes appropriately in a work setting. Emotional distress may impact the quality of her peer and supervisory relationships to a mild extent, although she is likely to interact adequately in situations where social contact is brief and superficial. Although she reports ongoing sobriety, risk of relapse exists with alcohol and other substances given her

history of alcohol dependence, cocaine dependence, cannabis dependence and self-medicating tendencies. (Depart Ex. B, pp 3-9).

- (8) In June, 2013, Claimant had a medical evaluation by the [REDACTED]. Claimant states she has bilateral carpal tunnel syndrome with a recent right sided surgery. Her right hand is dressed and sutures are in place. She states she is awaiting surgery on the left hand. She states she is dropping objects and has weakness. She states she can occasionally lift 2-5 pounds, but nothing with the right hand secondary to the surgery at this time. She has had arthritis for 20 years affecting her bilateral hands, wrists and causing degenerative disc disease in her back. She can sit for one hour, stand or walk for 10 minutes. She does not use a cane or walker. She had mild difficulty getting on and off the exam table, heel and toes walking, squatting and hopping. Her gait is normal. She has paravertebral muscle spasms and tenderness in the lumbar spine. (Depart Ex. B, pp 10-13).
- (9) In June, 2013, Claimant followed up with her treating psychiatrist for a medication review. She complains of ongoing problems with mood lability and depression as well as insomnia. Since her last visit, she reports variable and fluctuating moods and disrupted sleep patterns. A recent Depakote level was found to be in the low therapeutic range of 4.2. Her speech was somewhat pressured. The tone of her speech was somewhat loud. Her mood was mixed. Her affect was anxious. Mild underlying hypomania was noted. Paranoid trends were minimal. Her insight and judgment were fair to poor. Diagnosis: Axis I: Bipolar disorder, most recent episode mixed, moderate; Alcohol dependence; Cannabis abuse; Major Depressive disorder, recurrent, severe; Cocaine abuse; Axis V: GAF=40. Prognosis is fair to poor. Trileptal was increased to 20 mg, 3 every morning and 2 at bedtime. Trazodone 50 mg at bedtime was added. (Depart Ex. B, pp 14-15).
- (10) Claimant is a 50 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 212 lbs. Claimant completed high school.
- (11) 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, Section 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.

Disability is defined as the inability 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. 20 CFR 416.905(a). 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 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to

relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In Claimant's case, the ongoing depression and pain, along with other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

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).

Claimant has not been employed since September, 2012; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical and mental impairments upon her ability to perform basic work activities. Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). 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.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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 Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

Claimant's treating physician indicated Claimant has a GAF score of 40 in June, 2013. A GAF of 40 means there is some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood (e.g., depressed adult avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

Based on Claimant's vocational profile (approaching advanced age, Claimant is 50, has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's MA/Retro-MA and SDA benefits are approved using Vocational Rule 201.12 as a guide. Consequently, the department's denial of her December 18, 2012, MA/Retro-MA and SDA application cannot be upheld.

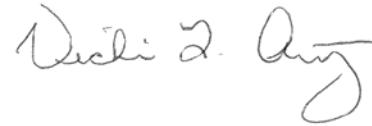
### **DECISION AND ORDER**

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 December 18, 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 December, 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.



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

Date Signed: December 11, 2013

Date Mailed: December 11, 2013

**NOTICE OF APPEAL:** 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.

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).

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.

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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

VLA/las

cc:

