

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

IN THE MATTER OF:



Reg. No.: 2013-40985
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: December 3, 2013
County: Lenawee

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, an in-person hearing was held on December 3, 2013, at the Lenawee County Department of Human Services (Department) office. Claimant personally appeared and testified. Participants on behalf of the Department included Eligibility Specialist [REDACTED].

During the hearing, Claimant waived the time period for the issuance 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 February 12, 2014, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Did the Department properly deny Claimant's Medical Assistance (MA) and Retro-MA application?

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 August 30, 2012, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On October 22, 2012, the Medical Review Team (MRT) denied Claimant's application for MA/Retro-MA indicating her impairments lacked duration. (Depart Ex. A, pp 4-5).
3. On October 23, 2012, the department caseworker sent Claimant notice that her application for MA/Retro-MA had been denied.

4. On January 11, 2013, the Department sent Claimant's Representative notice that Claimant's application for MA/Retro-MA had been denied.
5. On April 11, 2013, Claimant's representative timely filed a request for a hearing to contest the department's negative action.
6. On July 10, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform light work. (Depart Ex. B, pp 1-2).
7. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
8. Claimant is a 43 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 144 lbs.
9. Claimant does not have an alcohol or drug problem. She smokes one package of cigarettes a day.
10. Claimant's driver's license is suspended.
11. Claimant has a high school equivalent education.
12. Claimant is not currently working. Claimant last worked in 2008.
13. Claimant alleges disability on the basis of bipolar disorder, borderline personality disorder, anxiety, depression, posttraumatic stress disorder and back and knee problems.
14. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
15. Claimant's complaints and allegations 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 established by 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 (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).

As a preliminary matter, the Department indicated during the hearing that Claimant had been receiving MA from July, 2012 through May, 2013, when it was closed. The Department could not explain why her MA closed.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title 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. Michigan 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 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.

The federal regulations require that several considerations be analyzed in sequential 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 CFR 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:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 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 death? 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 client'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 analysis continues to Step 5. Sections 200.00-204.00(f)?
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? This step considers the residual functional 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 approved. 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 impairment(s) and how severe 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 disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

Statements about your pain or other symptoms will not alone 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 disabled 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 demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, Claimant is not ineligible 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 minimus* standard. Ruling any 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 analysis 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). In this case, this ALJ finds that Claimant cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant 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 Human Services*, 735 F2d 962 (6th 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.

The medical information indicates that Claimant suffers from bipolar disorder, borderline personality disorder, anxiety, depression, posttraumatic stress disorder and back and knee problems.

On [REDACTED], Claimant underwent a psychiatric evaluation by the [REDACTED]. The examining psychiatrist opined that Claimant seemed to understand and engage in simple to moderate concrete repetitive daily living tasks with some support. Complex tasks may cause distress to Claimant. Overall, her severe mood issues, memory, learning and social limitations seem to present a challenge to

her in her personal life and thought to be also be a challenge in the workplace should employment because a part of her daily routine. Prognosis is guarded. Diagnosis: Axis I: Bipolar disorder; Panic disorder with agoraphobia, Posttraumatic stress disorder, chronic; Cannabis dependence in full sustained remission; Cocaine dependence in full sustained remission; Axis II: Borderline Personality Disorder; Mild Mental Retardation; Axis III: Medically, she reported her right kidney was removed and she has a mass on the left side of her neck; Axis IV: Unemployment; Financial "no issuance" Social Issues; Axis V: GAF=45.

Claimant was admitted to the hospital for a total parotidectomy with facial nerve dissection on [REDACTED]. She underwent the procedure with no preoperative or postoperative complications. She was discharged on [REDACTED].

On [REDACTED], Claimant was readmitted to the hospital. She was status post left total parotidectomy with facial nerve dissection on [REDACTED], represented to the emergency room on post-operative day 4 with chills, sweats, nausea and vomiting. She was started on IV Unasyn for suspected surgical site infection. She was discharged on [REDACTED]. Her vital signs were normal. There was no nausea or vomiting. Her symptoms had resolved. The incision was well seated, clean, dry and intact with no signs of infection or wound breakdown.

Claimant applied for Medicaid in August, 2012.

On [REDACTED], Claimant's therapist, a social worker, completed a Psychological Report for the Department. The therapist indicated Claimant was oriented to person, place and time. Her anxiety was noteworthy. Her symptoms include depression, anxiety, agitation, overwhelmed emotionally and exhaustion. Her abstract thinking was limited. She presented as cooperative. Her anxiety was escalated as was her depression. Her bipolar disorder was evident. Her thought processes vacillated between oriented and calm to agitated. Her social functioning was limited as were most of her activities. Her bipolar symptoms affect her social relationships. Diagnosis: Axis I: Bipolar disorder; Depression; Axis II: Deferred to psychiatrist evaluation; Axis III: Arthritic condition due to previous accident; Axis IV: Medical; Financial; Axis V: GAF-55. The therapist had been treating Claimant since 2011. The therapist opined that Claimant is in a chronic state of physical and most notably, emotional depletion. She continually presents as emotionally and mentally "overextended" or "drained."

Claimant's treating psychiatrist completed a Psychiatric Examination Report for the Department on [REDACTED]. The psychiatrist has been treating Claimant since January, 2011. Diagnosis: Axis I: Depression; Anxiety disorder; Axis III: chronic back pain; Axis IV: Moderate; Axis V: Current GAF=50. According to the DSM-IV, 4th Ed., a GAF of 50 indicates serious symptoms (e.g., suicidal ideation, severe obsessional rituals, 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 Functional Capacity Assessment, Claimant was markedly limited in her ability to remember locations and work-like procedures; understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain

regular attendance, and to be punctual within customary tolerances; work in coordination with or proximity to others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public, accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; respond appropriately to change in the work setting and to set realistic goals or make plans independently of others.

In June, 2013, a Physician's Assistant from the [REDACTED] completed a Medical Needs form for the Department. Claimant was diagnosed with bipolar disorder and depression. The Physician's Assistant indicated Claimant was unable to work at her usual occupation or at any other occupation because Claimant has severe mood changes with poor social interaction. Because the form was not completed by a physician or psychologist, it is given minimal weight.

This Administrative Law Judge's interaction with Claimant at the hearing further supports the Independent Psychological Evaluation of [REDACTED], and the psychiatric evaluation by her treating psychiatrist in [REDACTED]. Moreover, her treating psychiatrist's Mental Residual Functional Capacity Assessment demonstrated marked restrictions in all but seven of 20 categories encompassing understanding, memory, sustained concentration, social interaction and adaption. Because Claimant's treating psychiatrist's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

Furthermore, Claimant was physically shaking, unable to maintain eye contact, and crying throughout the entire hearing. She had a hard time answering questions. Even after several assurances from this Administrative Law Judge that everything was going to be alright, she continued to show signs of severe anxiety and had a hard time interacting with this Judge.

Claimant is 43 years old, with a high school equivalent education. 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 Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

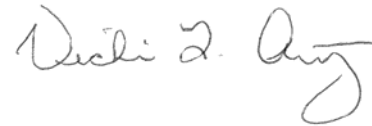
DECISION AND ORDER

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 eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is ORDERED that:

1. The department shall process Claimant's August 30, 2012, MA/Retro-MA 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 March 2015, 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.



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

Date Signed: March 10, 2014

Date Mailed: March 10, 2014

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.

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:

