

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-62185
Issue No(s): 2009; 4009
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Monroe

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 December 11, 2013, from Lansing, Michigan. Claimant, represented by Attorney [REDACTED] appeared and testified. Participants on behalf of the Department of Human Services (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 7, 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), 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:

1. On March 28, 2013, Claimant filed an application for MA/Retro-MA benefits alleging disability.
2. On July 24, 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 for lack of duration. (Depart Ex. A, pp 4-5).
3. On August 1, 2013, the department caseworker sent Claimant notice that her application for MA/Retro-MA and SDA had been denied.

4. On August 5, 2013, Claimant filed a request for a hearing to contest the department's negative action.
5. On September 24, 2013, the State Hearing Review Team (SHRT) found Claimant was not disabled and retained the capacity to perform unskilled work. SDA was denied for lack of duration. (Depart Ex. B, pp 1-2).
6. Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.
7. Claimant is a 39 year old woman whose birthday is [REDACTED] Claimant is 5'6" tall and weighs 150 lbs.
8. Claimant does not have an alcohol, drug or nicotine problem.
9. Claimant has a driver's license but does not drive due to anxiety.
10. Claimant has a high school education.
11. Claimant is not currently working. Claimant last worked in February, 2013.
12. Claimant alleges disability on the basis of bipolar disorder, posttraumatic stress disorder, borderline personality disorder, anxiety, fatigue, uncontrolled diabetes, neuropathy and hyperlipidemia.
13. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
14. 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).

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 MAC R 400.3151-400.3180. Department policies are found in the Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (RFT).

Statutory authority for the SDA program states in part:

- (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.

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 eligible 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.

Claimant suffers from bipolar disorder, posttraumatic stress disorder, borderline personality disorder, anxiety, fatigue, uncontrolled diabetes, neuropathy and hyperlipidemia.

The medical information indicates that Claimant was first psychiatrically hospitalized in 2007 for three weeks due to depression with suicidal thoughts and behavior. In 2008, she was hospitalized twice, each time after a suicide attempt by overdosing with insulin. She was hospitalized twice more in 2009 and again in 2010.

Claimant was psychiatrically hospitalized in February, 2013. She was first hospitalized for dehydration on the medical floor. She was then transferred involuntarily to the psychiatric facility due to severe depression with persistent suicidal thoughts and intentions. Claimant states she is still experiencing depression with feelings of worthlessness, helplessness and anhedonia. She is experiencing inner tension, an inability to relax and rest, racing thoughts, severe anxiety and constant fears. She was discharged after two weeks. She was referred to a psychiatrist for continuing treatment of her bipolar disorder.

Claimant underwent a psychiatric evaluation in March, 2013. She was somewhat anxious at the beginning of the conversation and her affect remained restricted throughout the evaluation. She looked tired and despondent. Her facial expression was sad and monotonous. Her thought process was rigid and the content of her thoughts were mostly negative, focusing on her past and current abuse and victimization. She stated she has been experiencing verbal hallucinations for a long time. She hears one female voice which dissembles to the voice of her adoptive mother, telling her that she is worthless, and not deserving to live and should end her life. She stated she is experiencing panic attacks with a racing heart, dizziness, shortness of breath and fear of losing control and fainting. She reported an increased startle reaction and nightmares connected to her childhood molestation and recent abuse. She reports her appetite is down and she has lost 15 pounds over the past four months. Diagnosis: Axis I: Bipolar affective disorder, depressed, severe, specified as with psychotic behavior; Prolonged posttraumatic stress disorder; Panic disorder; Axis II: Borderline personality disorder; Axis IV: Problems with primary support group, problems related to social environment, economic problems, problem with accessing healthcare, occupational problems, housing problems and other psychological and environmental problems; Axis V: GAF=41.

According to Claimant's treating psychiatrist, Claimant shows substantial functional impairments in the areas of working, recreation, relationships, self-direction and social interaction. During the course of her life, Claimant has developed a maladaptive pattern of behavior including an unstable self-image, self-mutilation, difficulties forming relationships, avoidance of real or imaginary abandonment and fluctuating attitudes toward others of adoration and hatred which are consistent with a diagnosis of borderline personality disorder.

Claimant testified credibly that she has a limited tolerance for physical activities and is unable to stand or sit for lengthy periods of time. Claimant has neuropathy in both legs and her knees are beginning to give out due to muscle weakness. Claimant stated she has panic attacks when in crowded places and her blood pressure rises when she is yelled at. Claimant indicated she has uncontrolled diabetes. As a result, when her sugar drops, her blood pressure rises and she is worn out afterward and unable to do

anything for a couple of hours. She has suicidal ideation. She has cut herself. She has been hospitalized over 10 times for suicide attempts, six times in the last three years.

The Departmental representative added that Claimant was using a cane and having a difficult time walking. Claimant also wore very thick eye glasses.

In June, 2013, Claimant was admitted to the hospital after presenting with fatigue, polyuria and notable hyperglycemia. She was discharged the following day with a diagnosis of hyperglycemia with uncontrolled diabetes mellitus without evidence of diabetic ketoacidosis, bipolar disorder and cystitis. Claimant was then seen for evaluation of diabetic retinopathy and vision loss in both eyes. She underwent a retinal consultation and was found to have mild retinopathy in both eyes.

In June, 2013, Claimant underwent a psychological evaluation by the [REDACTED].
[REDACTED] Diagnosis: Axis I: Bipolar disorder; Posttraumatic stress disorder; Axis III: Diabetes and fractured hip; Axis IV: Financial, unemployment, living arrangement and family issues "divorcing;" Axis V: GAF=47. Prognosis was guarded. The examining psychologist opined that Claimant has a history of psychiatric issues that have prevented her from participating in successful long term employment. She seems socially appropriate with others in brief encounters. She seems able to understand and engage in simple to some moderate daily living tasks. However, she has multiple life stressors from divorcing to living arrangements. Although she is benefitting from mental health treatment, she does not present as a viable candidate for employment at this time.

According to the DSM-IV, 4th Ed., a GAF of 41 and 47 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).

Claimant is 39 years old, with a high school 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 F.2d 216 (1986). Moreover, the independent psychologist the Department sent Claimant to in June, 2013, opined that Claimant does not present as a viable candidate for employment at this time. Due to the psychologist's independence, her opinion is given considerable weight.

In addition, the Department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that given Claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which Claimant could perform despite Claimant's limitations. Accordingly, this Administrative Law Judge concludes Claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA 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 BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, she must also be found "disabled" for purposes of SDA benefits.

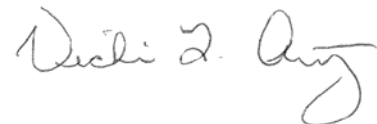
DECISION AND ORDER

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 March 28, 2013, 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 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 5, 2014

Date Mailed: March 5, 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

2013-62185/VLA

VLA/las

cc:

