

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-69486
Issue No(s): 2009, 4009
Case No.: [REDACTED]
Hearing Date: January 23, 2014
County: Genesee County DHS #2

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 January 23, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payments Worker, and [REDACTED] Eligibility Specialist.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. No additional records were submitted. Therefore, the decision is based on the available evidence.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

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 October 18, 2012, Claimant applied for Medicaid (MA-P) and SDA.
2. On February 13, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On February 21, 2013, the Department notified Claimant of the MRT determination.
4. On March 1, 2013, the Department received Claimant's timely written request for hearing.

5. On November 14, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged multiple physical disabling impairments including: diabetes, back problems, and asthma.
7. Claimant alleged mental disabling impairments including: bipolar, anxiety and comprehension problems.
8. At the time of hearing, Claimant was 46 years old with a [REDACTED] birth date; was 5'2" in height; and weighed 120 pounds.
9. Claimant completed the 8th grade and has an employment history as a dog groomer and working in a factory.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The 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 BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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 416.913. 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 (i.e. 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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR

416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Claimant alleges disability due multiple impairments, including: diabetes, back problems, asthma, bipolar, anxiety and comprehension problems.

From December 20, 2011 to December 23, 2011, Claimant was admitted to Hurley Medical Center necessitated by severe depression. A diagnosis of bipolar depression was documented.

From February 23, 2012 through February 29, 2012, Claimant was admitted to Hurley Medical Center for the primary diagnosis of depressive disorder. A diagnosis of bipolar depression was also documented. Upon admission Claimant presented as a danger to herself and others as evidenced by her taking an overdose of Celexa, Metformin and Xanax.

Records from Community Mental Health (CMH) document diagnoses of post-traumatic stress disorder and bipolar disorder. Psychiatric hospitalizations in December 2011 and February 2012 for attempted overdose were noted. On May 7, 2012 a Mental Residual

Functional Capacity Assessment was completed. Marked limitations were indicated regarding all but three of the nonextertional/mental capacities.

On May 14, 2012, Claimant attended a consultative Mental Status Examination. Diagnoses were: generalized anxiety, premorbid; panic disorder without agoraphobia; posttraumatic stress disorder; bipolar II disorder, depressed, with paranoia; rule out schizoaffective disorder. The prognosis was: Claimant has mental issues that interfere with her ability to manage gainful employment; disagreements, arguments, and paranoia with female co-workers interferes with employment resulting in being fired; insight is poor; Claimant reported anxiety and panic attacks interfering with her job; Claimant needs the support of professional counseling and medications at this time.

On May 17, 2012, Claimant attended a consultative Internal Medicine Examination. Impressions included: chronic low back pain, bipolar disorder, recently diagnosed schizophrenia, chronic anxiety and panic disorder, diabetes, and seizure disorder on preventative medications with the last seizure two years ago. In summary the physician wrote: Claimant's upper and lower extremities have normal function, strength and range of motion; Claimant is somewhat limited by her chronic low back pain; her mobility and ability to stand are affected however she is able to do chores around the house and take care of her puppies; Claimant is independent with self-care skills; Claimant seems capable of non-strenuous type activities with lifting up to 20 pounds and avoidance of prolonged walking or standing; Claimant's ability to perform work related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying, and traveling, as well as pushing and pulling heavy objects appears to be at least moderately impaired due to objective findings.

On September 29, 2012, Claimant's family medicine doctor completed a DHS-54A Medical Needs form. Diagnoses of depression, anxiety, bipolar disorder, pre-diabetes and asthma were documented. The doctor indicated Claimant cannot work at her usual occupation as a dog groomer due to anxiety and depression.

On October 11, 2012, Claimant's family medicine doctor completed a DHS-49 Medical Examination Report documenting diagnoses of depression, anxiety, bipolar, pre-diabetic and panic disorder. Physical limitations of lifting 20 pounds occasionally, standing/walking less than 2 hours in an 8 hour work day were marked due to psychiatric medication. Mental limitations with memory, sustained concentration, and social interaction were marked.

As summarized above, Claimant has presented medical evidence establishing that she does have some physical and mental limitations with her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis 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. The evidence confirms

treatment/diagnosis of bipolar disorder, post-traumatic stress disorder, anxiety, depression, chronic low back pain, asthma and pre-diabetes.

Very limited objective medical documentation of physical impairments from Claimant's various diagnoses, such as chronic low back pain, asthma and pre-diabetes was submitted. The objective medical evidence was not sufficient to meet or equal the criteria of listings 1.00 Musculoskeletal System, 3.00 Respiratory System, or 9.00 Endocrine Disorders.

Listing 12.00 addresses Mental Disorders. Specifically for listing 12.04 Affective disorders, 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.

For listing 12.06 Anxiety-related disorders, 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 both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Based on the evidence available to this ALJ, Claimant appears to meet listing 12.04, 12.06 or its equivalent. The records document psychiatric hospitalizations in December 2011 and February 2012 for attempted overdose. The records from Claimant's treating mental health provider, CMH, document diagnoses of post-traumatic stress disorder and bipolar disorder. The May 7, 2012 a Mental Residual Functional Capacity Assessment indicated marked limitations regarding all but three of the listed nonexertional/mental capacities. The May 14, 2012 consultative Mental Status Examination documented diagnoses of generalized anxiety, premorbid; panic disorder without agoraphobia; posttraumatic stress disorder; bipolar II disorder, depressed, with paranoia; rule out schizoaffective disorder. The prognosis was: Claimant has mental issues that interfere with her ability to manage gainful employment; disagreements, arguments, and paranoia with female co-workers interferes with employment resulting in being fired; insight is poor; Claimant reported anxiety and panic attacks interfering with her job; Claimant needs the support of professional counseling and medications at this time. Further, Claimant's testimony was consistent with these records regarding her mental impairments. Examples include ongoing frequent panic attacks, crying spells, comprehension problems, and trouble remembering instructions. This Administrative Law Judge will not continue through the

remaining steps of the assessment. Claimant's testimony and the only medical documentation available to this ALJ support the finding that Claimant meets or equals the requirements of a listing.

In this case, the Claimant is found disabled for purposes SDA benefits as the objective medical evidence also does establish a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Claimant's impairments did preclude work at the above stated level for at least 90 days.

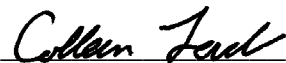
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a review of the application dated October 18, 2012, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for May 2015.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 16, 2014

Date Mailed: April 16, 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

CL/hj

cc:

