

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2014 5200
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: February 26, 2014
Wayne County DHS (41)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 26, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and 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 July 7, 2013, the Claimant submitted an application for public assistance seeking MA-P and retro MA-P to April 2013 and State Disability Assistance, SDA.
2. On October 9, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)

3. The Department notified the Claimant of the MRT determination on October 11, 2013.
4. On October 11, 2013, the Department received the Claimant's timely written request for hearing.
5. On December 10, 2013, the State Hearing Review Team ("SHRT") found the Claimant not disabled. Exhibit 2
6. The Claimant alleged mental disabling impairment(s) due to Depression and anxiety and panic attacks.
7. The Claimant has not alleged any physical disabling impairments.
8. At the time of hearing, the Claimant was 47 years old with a [REDACTED] birth date. The Claimant is 5'4" feet tall in height; and weighed 130 pounds.
9. The Claimant has a GED. The Claimant's past work history includes Department store seasonal employment as a cashier and as a stock person at a grocery store.
10. At the time of the hearing, the Claimant was not employed.
11. The 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 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 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 (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 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) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a) (4) (i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a) (b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a (e) (2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c) (2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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, the Claimant alleged mental disabling impairment(s) due to Depression, Anxiety and Panic Attacks.

The Claimant has not alleged any physical disabling impairments.

A summary of Claimant's medical evidence follows.

The Claimant has been in treatment since 1986 although currently cannot see her prior treating doctor psychiatrist due to lack of insurance. The Claimant at the time of the hearing was receiving treatment from Southwest Solutions a Community Mental Health facility located in Detroit, Michigan. The Department was ordered by Interim Order to obtain treatment records from Southwest Solutions and did not provide the records, thus the medical evidence available will be viewed in the light most favorable to the Claimant. The Claimant was also ordered to provide an update from her current psychiatrist and did not do so. As a patient, the Claimant receives psychiatric care, medication monitoring and individual therapy. The Claimant is seen approximately twice per month and has a medication review every 4 to 6 weeks with her psychiatrist.

The Claimant was evaluated by her treating psychiatrist in August 2013. At that time, she presented as anxious, tearful, poor eye contact and adequate hygiene. The Exam noted ongoing evidence of anxiety and Depression and not able to function. At the time, the Claimant was receiving medical management and therapy. Claimant presented as alert and oriented x3. Daily functioning was noted as isolative. The Diagnosis was Major depression, Post traumatic stress Disorder and Anxiety. The current GAF was 45 and had worsened from the prior year. The doctor had seen the Claimant for several years. The exam notes indicated that anxiety, panic and depression are affecting her significantly and that she needed assistance in her home. The mental limitations were memory, sustained concentration, social interaction and reading and writing.

A Mental Residual Functional Capacity Assessment was also completed at the time of the evaluation. The Claimant was evaluated as markedly limited in her Understanding and Memory in all categories which includes ability to remember locations and work like procedures, ability to understand and remember one or two-step instructions and understand detailed instructions. As regards Sustained Concentration and Persistence, the Claimant was evaluated as markedly limited in her abilities to carry out detailed and simple instructions, maintain attention and concentration for extended periods, ability to make work related decisions, and complete a normal work day and worksheet without interruptions from psychologically based symptoms, and to perform at a consistent pace

without an unreasonable number of rest periods. The Claimant was moderately limited in her ability to sustain an ordinary routine without supervision.

As regards Social Interaction, the Claimant was moderately limited in ability to interact appropriately with the general public, and ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The remaining categories such as ability to maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness, ask simple questions or request assistance and accept instructions and respond appropriately were all evaluated as markedly limited. As regards Adaptation, the Claimant was markedly limited in all categories including responding appropriately to changes in the workplace, travel in unfamiliar places and use public transportation and ability to set realistic goals or plans independently of others. The Claimant was moderately limited in ability to be aware of normal hazards and take appropriate precautions.

At the time of the Medical – Social Questionnaire completed by the Claimant also noted back pain however, no medical records were obtained by the Department or provided by the Claimant.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some objective medical evidence establishing that she does have some mental limitations on her ability to perform basic work activities. Accordingly, 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 or more; 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 Claimant asserts mental disabling impairments due to anxiety, depression and panic disorder.

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for this disorder is met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

The Listing was carefully reviewed and it is determined for the reasons set for below that the Claimant meets listing 12.04 (A) (B) which require:

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

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;

In this case, the record reveals ongoing treatment for Depression, Anxiety, Panic attacks and Post traumatic Stress Disorder. The Claimant presented at the hearing as nervous and credibly testified that she has suffered from Depression since 1986. The Claimant has not driven for several years due to panic and her isolative behavior. She has loss of appetite. She spoke very slowly during the hearing and with a flat affect. The Claimant cries frequently and daily, and is currently in a sexually abusive relationship with her boyfriend. The Claimant lives with constant stress and has limited social interaction and problems with concentration. The Claimant credibly testified that she suffers from extreme anxiety and panic much of the time and particularly in work situations or being out in public. Based upon the record presented, the Claimant has demonstrated that she is unable to maintain employment for any meaningful length of time, The Claimant's medical evaluations by her treating psychiatrist documented marked limitations in all categories set forth in paragraph B above which are sufficient to meet the listing requirements. In addition, deference was given to the treating source opinion of the Claimant's psychiatrist.

The Claimant has been treated for several years with no significant change or improvement.

Overall, based on the testimony of the Claimant and the independent medical evidence presented, it is determined that the Claimant has met the Listing 12.04 A and B or its medical equivalent. It is determined that the Claimant exhibited recurrent symptoms associated with Depression and Anxiety for mental illness associated with her mental impairments which are a sign of marked distress.

Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent of, a listed impairment within 12.00, specifically 12.04 A and B. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required. In this case, the Claimant is found disabled for purposes of the MA-P program.

The State Disability Assistance 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 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.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, she is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

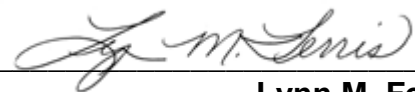
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA-P and/or SDA benefit program.

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:

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the July 7, 2013 application for MA-P and retro MA-P (April 2013) and SDA to determine the Claimant's eligibility and determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall issue a supplement to the Claimant for any benefits the Claimant was otherwise entitled to receive in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in May 2015 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 23, 2014

Date Mailed: May 23, 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

LMF/tm

cc:

