

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

IN THE MATTER OF:

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Reg. No.: 2014-17184
████████████████████
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Hearing Date: March 24, 2014
DHS County: Oakland County (03)

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, an in person hearing was held on March 24, 2014, from Walled Lake, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ also appeared as a witness. ██████████ also appeared as Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

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 11, 2013, the Claimant submitted an application for public assistance seeking MA-P and retro MA-P for April 2013.
2. In August 20, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on August 23, 2013.

4. On December 9, 2013, the Department received the Claimant's written request for hearing. The Claimant's AHR was not given notice of the MRT denial until October 24, 2013 and therefore the Claimant's AHR's hearing request was deemed timely.
5. On February 25, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued March 21, 2014. The new evidence was submitted to the State Hearing Review Team on May 22, 2014.
7. On July 22, 2014, the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to chronic severe pain in her neck and lower back, and head pains radiating to the left side.
9. The Claimant has alleged mental disabling impairments due to major depressive disorder, anxiety and panic disorder.
10. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date. Claimant is 5'4" in height; and weighed 140 pounds. The Claimant has lost 15 pounds in the last 6 months.
11. The Claimant has no past employment record.
12. The Claimant's impairments have lasted or are expected to last for 12 months' duration or more.

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 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). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is

assessed before moving from Step 3 to Step 4. 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 4 and 5. 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 working and is therefore not involved in substantial gainful activity and, 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 mean 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 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).

The Claimant has alleged mental disabling impairments due to major depressive disorder, panic attacks and anxiety.

The Claimant alleges physical disabling impairments due to chronic severe pain in her neck and lower back, and head pains radiating to the left side.

A summary of the Claimant's Medical evidence follows.

The Claimant credibly testified that she has suffered from depression and anxiety for over 20 years with prior suicide attempts. At the hearing the undersigned observed her demeanor and affect to be flat and depressed.

The Claimant attempted to commit suicide by taking an overdose of prescribed medications on [REDACTED] and was taken to the hospital. She was admitted and started on Prozac and suicide precaution. She was admitted for a 3 day stay and released in stable condition

The Claimant also sees her psychiatrist monthly, as well as her case manager monthly. The Claimant has been participating in this therapy since her suicide attempt. Prior to this therapy the Claimant was being treated for severe depression ongoing since 2009. As reported by the community mental health treater her GAF score has consistently been 50 with no improvement or change.

The Claimant was also evaluated by a Consultative Neurological examiner on [REDACTED] [REDACTED]. The impression was that notwithstanding the lack of medical records the Claimant did present with a positive Tinel's test, history of headaches and has not received any preventive treatment. A Medical Examination Report was completed. The

current diagnosis was multiple problems, back, neck and leg pain. The examiner noted Claimant could attend to activities of daily living, the clinical impression was stable, and limitations were imposed. The Claimant could lift/carry less than 10 pounds frequently and occasionally up to 25 pounds. She could stand/and or walk about 6 hours in an 8 hour day and sit about 6 hours in an 8 hour day, the Claimant was not limited with regard to use of her hands/arms, and feet/legs.

A Consultative psychological evaluation was completed on [REDACTED]. A diagnostic interview and mental status exam was performed. At the examination the Claimant presented as disheveled, with filthy clothes and body odor. Her memory was mildly impaired; she was distant, and demonstrated poor attention. The Claimant's perception was less than adequate and her thoughts were not very organized. The Claimant's speech was soft, monotonous, but coherent. The Claimant's affect was constricted and showed on occasion anger and frustration. She appeared very sad and depressed. The Summary Impressions were that she seems to function within the average range of intelligence but has lost some cognate functions such as memory, attention and concentration which is directly due to her severe depression. Her depression renders her incapable of being active and performing her responsibility. The diagnosis was Major Depression, Recurrent Severe. GAF was 50.

An evaluation of the four work related mental abilities and capacity to manage was also performed. Ability to relate to others, coworkers and supervisors is markedly impaired because she is uncomfortable around people and will not interact. Ability to understand, remember and carry out simple tasks is within normal range. Ability to maintain attention, concentration, persistence and pace to perform routine tasks is markedly impaired. Her mental condition may intermittently interfere with her performance. Ability to withstand the stress and pressures associated with day-to-day work activity is markedly impaired. She is likely to decompensate quickly if she feels pressured. Claimant was not able to manage her own funds. The Prognosis is guarded because of long term depression which invades her whole life compounded by pain.

The Claimant has consistently treated with community mental health programs

The Claimant credibly testified that her mental impairments had been with her throughout her adult life, that she has difficulty around crowds, has daily and ongoing anxiety attacks, and cries generally at least once weekly. She suffers from poor memory and concentration, has no friends and does not trust people. The Claimant often spends her day in bed and does nothing due to her depression.

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 objective medical evidence establishing that she

does have some physical 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; 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. Listing 12.04 Affective Disorders was reviewed. The Listing requires that the following requirements be met.

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

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
- 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;

Based upon the medical evidence provided by the Consultative Examiner who examined her in [REDACTED] and performed a complete and thorough evaluation as well as Claimant's ongoing treatment with her community health mental health provider, it is determined that the Claimant has met Listing 12.04 A and B. Based upon this determination it is found that the Claimant is disabled at Step 3 with no further analysis required.

Therefore, it is determined based upon the objective medical evidence and a review of the entire record, that the Claimant is found disabled, at Step 3 as Listing 12.04 Affective Disorders is met.

The Claimant has been found disabled for medical assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P benefit program.

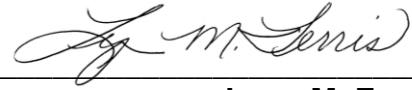
Accordingly, it is ORDERED:

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. The Department is ORDERED to initiate a review of the application dated July 11, 2013 for MA-P and retro MA-P to April 2013, if not done previously, to determine Claimant's non-medical eligibility.

2. A review of this case shall be set for August 2015.



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

Date Signed: August 14, 2014

Date Mailed: August 14, 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

2014-17184/LMF

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/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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