

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002868
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 11, 2014
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 11, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] Claimant's daughter testified on behalf of Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

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 [REDACTED], Claimant applied for MA benefits (see Exhibits 45-46), including retroactive MA benefits from 12/2012 (Exhibits 43-44).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).
4. On [REDACTED], Claimant's requested a hearing disputing the denial of MA benefits.

5. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Benefit Notice (Exhibit 7) informing Claimant of the denial.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.
7. As of the date of the administrative hearing, Claimant was a 44 year old female with a height of 5'4" and weight of 240 pounds.
8. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
9. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 4/2014 and an Adult Medical Program recipient for an unspecified period before 4/2014.
10. Claimant alleged disability based on impairments and issues including right shoulder pain, lower back pain, right hand numbness, bipolar disorder, depression, and migraine headaches.

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, a 3-way hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does

always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.*, p. 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.*, p. 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir.

1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of the relevant submitted medical documentation.

A Periodic Review of Progress (Exhibits 34-35) dated [REDACTED] was presented. Noted therapy goals included the following: utilizing positive coping skills, stabilizing mood decreasing anger and impulsivity, and feeling less depressed.

A Psychiatric Evaluation (Exhibits 28-33) dated [REDACTED] was presented. The report was completed by a psychiatrist from a treating mental health agency. Claimant reported symptoms including the following: crying spells, depression, irritability, isolative behavior, thoughts of hurting others, mood swings, and insomnia. Reported medications included Depakote, atenolol, Elavil, Zoloft, Klonopin, and Norco. Notable observations and assessments of Claimant included the following: cooperative, dysphoric and depressed mood, goal directed thought process, normal thought content, normal attention, normal speech, average grooming, adequate impulse control, adequate judgment, orientation x4, and hypersomnia. An Axis I diagnosis of major depressive disorder was noted.

A Biopsychosocial Assessment (Exhibits A44-A59) dated [REDACTED] was presented. The report was completed by a limited licensed psychologist, presumed to be from a newly treating agency. It was noted that Claimant reported lifelong struggle with mild depression. Claimant reported that her depression increased after losing employment in 2010. Reported symptoms included; crying spells, feelings of hopelessness, irritability, loss of appetite, and sleep pattern fluctuations. Claimant reported recent violent thoughts toward a family member. A diagnosis of major depression was noted.

A Non-Emergent Psychiatric Evaluation (Exhibits A38-A43) dated [REDACTED] was presented. The evaluation was completed by a treating psychiatrist, presumed to be newly treating. Noted observations of Claimant included the following: cooperative attitude, impulsivity, pressured speech, elated mood, goal oriented, low average cognitive function, and good memory. It was noted that Claimant's impulse control and judgment were impaired. It was also noted that the impairments had mild impact on Claimant's functioning. Diagnoses were not noted.

Various Prescriber's Record of Orders (Exhibits A16-A37) ranging from 8/2013-6/2014 were presented. The documents verified Claimant that underwent ongoing prescription treatment from a treating mental health agency.

Hospital documents (Exhibits A1-A3) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of headaches, ongoing for 2-6 days. A course of action was not noted. It was noted that Claimant had complete resolution of symptoms.

Physician progress notes (Exhibits) dated [REDACTED] were presented. It was noted that Claimant complained of chronic back pain, wheezing, and left leg pain related to a varicose vein. A primary assessment of asthma was noted. Trace edema was noted in Claimant's legs. Other assessments included chronic back pain, HTN, obesity, bipolar disorder, nicotine abuse, and migraine headaches. Various medications were prescribed.

Physician progress notes (Exhibits A7-A8) dated [REDACTED] were presented. It was noted that Claimant felt better and lost some weight; Claimant's weight was noted to be 251. Claimant denied shortness of breath and leg edema was improved. Various medications were noted as prescribed.

Physician progress notes (Exhibits A14-A15) dated [REDACTED] were presented. It was noted that Claimant was feeling better and losing weight (Claimant weighed 238 pounds). All noted physical exam findings were normal.

A Psychiatric Psychological Examination Report (Exhibits B1-B2) dated [REDACTED] was presented. The form was completed by a treating social worker, with a 1 year history with Claimant. It was noted that Claimant attended monthly therapy sessions and medication reviews. Claimant reported symptoms of impaired judgment, crying spells, anhedonia, hopelessness, labile mood, difficulty with completing tasks, difficulty with social groups, suicidal ideation, and difficulty making decisions. Goal oriented thought and periodic tearfulness were noted as observed. A diagnosis of major depression (recurrent and severe) was noted. Claimant's GAF was noted to be 41.

The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "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)."

A Mental Residual Functional Capacity Assessment (Exhibits B3-B4) dated [REDACTED] was presented. The assessment was noted as completed by a treating social worker. Claimant's social worker noted that Claimant had the following marked restrictions:

- Understanding and remembering detailed instructions
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Sustaining an ordinary routine without supervision
- Working in coordination or proximity to other without being distracting

- Making simple work-related decisions
- Completing a normal workday without psychological symptom interruption
- Interacting appropriately with the general public
- Asking simple questions or requesting assistance
- Accepting instructions and responding appropriately to criticism
- Responding appropriately to changes in the work setting
- Traveling to unfamiliar places including use of public transportation
- Setting realistic goals or making plans independently of others.

Claimant alleged disability, in part, based on exertional restrictions related to right shoulder pain and right hand numbness. Presented records failed to support any severe impairments related to Claimant's allegations.

Claimant alleged disability, in part, based on lower back pain. Presented records verified a diagnosis of chronic back pain. A diagnosis of chronic back pain implies some type of ongoing spinal abnormality that would likely restrict Claimant's ambulation and lifting/carrying.

Claimant alleged disability, in part, based on headaches. A hospital encounter and physician treatment for headaches was verified. The evidence was sufficient to presume any degree of concentration difficulties related to recurring migraine headaches.

Claimant's AHR seeks a disability determination from 12/2012. Medical Records verified psychological treatment as far back as 5/2013. Medical records from before 5/2013 were not presented. Presented records were suggestive that Claimant had lifelong depression, however, without treatment records insufficient evidence exists to infer a severe impairment prior to 5/2013.

It is found that Claimant failed to establish a severe impairment from 12/2012 through 4/2013. Accordingly, it is found that DHS properly denied a claim of disability for those months. It is further found that Claimant has a severe impairment beginning 5/2013 and the disability analysis may continue to determine Claimant's MA eligibility since 5/2013.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be depression. Depression is an affective disorder covered by Listing 12.04 which reads as follows:

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

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.

Starting with Part A, psychological treatment records sufficiently verified that Claimant struggles with anhedonia, sleep disturbance, suicide ideation, and decreased energy. It is found that Claimant meets Part A of the above listing.

There was considerable disagreement among treaters concerning the severity of Claimant's condition. In 6/2013, a newly treating psychiatrist determined Claimant to have a GAF of 40. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a score of 31-40 is described as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." The GAF is highly indicative of severe functioning impairments.

One month later, a different psychiatrist found that Claimant's impaired judgment had mild effects on functioning. The psychiatrist also determined that Claimant's adequate concentration had no effects on her functioning. A GAF was not noted but the effects on functioning are consistent with a much higher GAF than 40.

Claimant continued therapy for the next several months. The only documentary evidence of Claimant's functioning ability in 2014 came from a social worker/counselor.

SSA 06-03p provides guidance on what SSA accepts as "acceptable medical sources". Licensed physicians and licensed or certified psychologists are acceptable medical sources. Nurse practitioners and social workers are not "acceptable medical sources". SSA 06-03p goes on to state why the distinction between medical sources and non-medical sources is important.

First, we need evidence from "acceptable medical sources" to establish the existence of a medically determinable impairment. Second, only "acceptable medical sources" can give us medical opinions. Third, only "acceptable medical sources" can be considered treating sources, as defined in 20 CFR 404.1502 and 416.902, whose medical opinions may be entitled to controlling weight.

A social worker is not an "acceptable medical source". The treating social worker had a 1 year history of treating Claimant. Providing counseling for one year is evidence that

the counselor had good knowledge Claimant's psyche. Thus, the counselor's opinions merit some respect.

Claimant's counselor noted that Claimant's GAF decreased from 50 to 41 over the course of 2013 to 2014. It is curious that Claimant's GAF decreased over the course of psychological treatment. It is possible that Claimant experienced life stressors to exacerbate her condition, however, none were apparent. The evidence could be indicative of psychological deterioration. The evidence could also be suggestive of an exaggeratedly low GAF from a non-medical source.

Claimant's social worker noted in an examination report that Claimant has difficulty completing tasks due to low motivation. An example of maintaining hygiene was noted. Isolation in Claimant's house was also noted due to social anxiety. The statements were consistent with testimony from Claimant and her daughter. For example, Claimant credibly testified that she needs physical therapy but will not go due to anxiety. A failure to pursue medical treatment due to psychological disorder is consistent with marked restrictions.

It is appreciated that Claimant regularly attended therapy and appears to have complied with medication requirements. Thus, the evidence was suggestive that Claimant did her part in trying to overcome depression.

Based on the presented evidence, it is found that Claimant has marked concentration and social restrictions. It is further found that Claimant meets the listing for affective disorders and is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA benefits to Claimant for the months of 12/2012-4/2013 based on a determination that Claimant was not disabled. The actions taken by DHS are **PARTIALLY AFFIRMED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED]
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual beginning 5/2013;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by DHS are **PARTIALLY REVERSED**.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/10/2014**

Date Mailed: **10/10/2014**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

