

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

IN THE MATTER OF:



Reg. No.: 2014-17947
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: October 15, 2014
County: Wayne (18)

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, an in-person hearing was held on October 15, 2014 from Detroit, Michigan. Participants included the above-named Claimant, via telephone. [REDACTED] testified and appeared as Claimant's legal counsel / 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) and State Disability Assistance (SDA) 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 SDA and MA benefits, including retroactive MA benefits from 3/2013.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.

3. On an unspecified date, the Medical Review Team (MRT) determined that Claimant was not a disabled individual.
4. On [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA and SDA benefits.
6. On [REDACTED], an administrative hearing was held.
7. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 21 days to allow Claimant to submit hospital records from 10/2014 and treatment records from Claimant's primary care physician; an Interim Order Extending the Record was subsequently mailed to both parties.
9. Additional documents were not submitted.
10. As of the date of the administrative hearing, Claimant was a 47 year old female with a height of 5'2" and weight of 125 pounds.
11. Claimant has no known relevant history of alcohol or illegal substance abuse.
12. Claimant's highest education year completed was the 12th grade.
13. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 4/2014.
14. Claimant alleged disability based on impairments and issues including back and foot arthritis, seizures, hypertension (HTN), depression, diabetes mellitus (DM), and right knee arthritis.

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).

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 Psychiatric Psychological Examination Report (Exhibits 15-16) dated [REDACTED] was presented. The form was completed by a treating psychiatrist with an unstated history of treating Claimant. It was noted that Claimant reported sadness, loss of interest, guilt, hopelessness, low energy, suicidal ideation, and pain. It was noted that Claimant was raped three previous times. It was noted that Claimant was homeless. A distant suicide attempt was noted. Noted observations of Claimant included the following: orientation x4, sadness, despondent mood, calm behavior, average intelligence, no evidence of psychosis, no delusional thought, calm, and smiling. An Axis I diagnosis of bipolar disorder was noted. Claimant's GAF was noted to be 48.

Claimant's AHR presented Claimant psychological treatment documents (Exhibits A1-A162). Generally, the documents verified regular counseling, nursing and psychiatric appointments (typically 1-3 times per month), though not all appointments are summarized below.

Mental health agency treatment documents (Exhibits A124-A162) from 6/2013-8/2013 were presented. It was noted that Claimant presented to the agency with complaints of sadness, loss of interest, guilt, hopelessness, low energy, pain complaints, and suicidal ideation. On [REDACTED], a counselor noted that Claimant reported a recent nighttime seizure; it was also noted that Claimant reported suicidal ideation and mood swings after running out of medication. On [REDACTED], a counselor noted that Claimant reported improved sleeping and that Claimant was maintaining physical health and performance of ADLs. On [REDACTED], a treating nurse noted that Claimant was given sample meds for Saphris because Claimant could not afford meds.

An Update Assessment (Exhibits A75-A91) dated [REDACTED] was presented. The assessment was completed by unspecified mental health agency staff, presumed to be a counselor. It was noted that Claimant reported improved mood due to medication and treatment, though she also reported that she had a long way to go. The following observations were noted of Claimant: unremarkable thought content, alert,

unremarkable characteristics of speech, embarrassed and tearful appearance, and appropriate affect. Claimant was noted to independently perform all ADLs including taking meds, eating, dressing, bathing, and ambulation. Claimant was noted to be a moderate risk for suicide; the risk was described as ideation with no intent or behavior. Claimant's GAF was noted to be 47. An Axis I diagnosis of major depressive disorder was noted.

Mental health agency treatment documents (Exhibits A124-A162) from 9/2013-12/2013 were presented. On [REDACTED], a counselor noted that Claimant showed no issues with judgment or insight. On [REDACTED], a treating nurse noted that Claimant was given a 7 day supply of meds which included Vibryd, Cymbalta, and Saphris.

An Initial Psychosocial (Exhibits 42-58) dated [REDACTED] was presented. The report was completed by a treating social worker. It was noted that Claimant's psyche was stable. Claimant's housing was described as practically unlivable. Observations of Claimant included the following: unremarkable thought process, normal concentration, orientation x4, intact memory, unremarkable speech, and tearful and embarrassed presentation. It was noted that Claimant independently performed ADLs. A history of no sexual abuse was noted. Claimant's GAF was noted to be 47.

Mental health agency treatment documents (Exhibits A17-A68) from 2/2014 and 3/2014 were presented. On [REDACTED], a goal of emotional and mental stability was noted; it was also noted that Claimant wanted to attend nursing school. On [REDACTED], it was noted that Claimant was medication compliant and was attending all therapy sessions. On [REDACTED] Claimant's psychiatrist determined Claimant's GAF to be 47; observations of Claimant included unremarkable behavior, unremarkable appearance, unremarkable speech, unremarkable affect, depressed mood, unremarkable perception, fair insight, fair judgment, unremarkable memory, and unremarkable thought process and content.

Mental health agency care coordinator notes (Exhibits A12) dated [REDACTED] were presented. It was noted that Claimant reported a recent attempted firebombing of her home.

Mental health agency social worker notes (Exhibits A10-A11) dated [REDACTED] were presented. It was noted that Claimant needed a ride home, following the session.

Mental health agency counselor notes (Exhibits A8-A9) dated [REDACTED] were presented. It was noted that a home call was conducted because Claimant had not been returning calls. It was noted that Claimant had been taking meds and doing well.

Mental health agency counselor notes (Exhibits A6-A7) dated [REDACTED] were presented. It was noted that Claimant's electricity was in shut-off status.

Mental health agency counselor notes (Exhibits A2-A5) dated [REDACTED] were presented. It was noted that Claimant was taking meds and "doing okay".

A Medication Review Note (Exhibit A1) dated [REDACTED] was presented. It was noted that Claimant was doing well on meds.

Claimant alleged disability, in part, based on various physical problems. Claimant testified that she has recurring seizures (only one in last 7 months), foot arthritis, spinal arthritis, knee arthritis, and diabetes. Treatment documents for Claimant's physical problems were not presented. The absence of documents is particularly problematic when factoring that the record was extending specifically for the submission of such documents. It is found that Claimant failed to establish a severe impairment related to a physical problem.

Claimant alleged disability, in part, due to depression and related symptoms. Presented evidence verified that Claimant attends regular counseling sessions to combat depression. Presented documents verified that Claimant likely has a degree of social and concentration restrictions due to depression. It is found that Claimant established severe impairments and the analysis may proceed to step three.

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.

A Mental Residual Functional Capacity Assessment (Exhibits 11-12) dated [REDACTED] was completed by Claimant's treating physician. It was noted that Claimant was last examined approximately 6 months earlier. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Claimant was found markedly restricted in 19 of 20 abilities, which included the following:

- Remembering locations and other work-like procedures

- Understanding and remembering 1 or 2-step directions
- Understanding and remembering detailed instructions
- Carrying out simple 1-2 step directions.
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Sustaining an ordinary routine
- 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
- Getting along with others without exhibiting behavioral extremes
- Responding appropriately to changes in the work setting
- Being aware of normal hazards and taking appropriate precautions
- Traveling to unfamiliar places including use of public transportation
- Setting realistic goals or making plans independently of others.

A medical opinion that Claimant is markedly restricted in 19/20 work-related abilities is highly suggestive of social functioning and concentration restrictions meeting affective disorder listing requirements. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

The above marked restrictions were opined by Claimant's physician very early in Claimant's mental health treatment. Based on presented documents, the form may have been completed on Claimant's first day. It must be doubted whether appropriate effort was made in evaluating Claimant before such restrictions were stated. This consideration tends to lessen the credibility of provided statements of restriction.

Provided restrictions also fail to account for any improvement in Claimant's treatment. Claimant testified that meds and counseling improved her psyche. Claimant's testimony was consistent with statements made to her counselor in 12/2013. Updated restrictions were not provided. This consideration makes it probable that Claimant has fewer restrictions since applying for benefits.

Claimant's psychiatrist opined that Claimant was markedly restricted in following simple instructions, understanding and remembering simple instructions, and sustaining an ordinary routine. Presented counseling records present no compelling evidence to justify such restrictions. When factoring that Claimant appeared to independently attend therapy, Claimant appears minimally capable of understanding, remembering, and carrying-out simple instructions, particularly when performed as a routine. This consideration suggests that Claimant's restrictions were exaggerated.

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).” Claimant’s GAF was regularly noted to be between 41 and 50, which is consistent with marked restrictions. Claimant’s GAF, when isolated, is indicative of marked restrictions throughout Claimant’s counseling history.

As noted above, Claimant reported improvement in her psyche since beginning therapy. Despite Claimant’s improvement, Claimant’s GAF never increased throughout her psychological treatment. The failure to increase Claimant’s GAF raises credibility questions about provided functioning levels.

Claimant testified that she took steps toward suicide approximately one year ago by turning on the gas inside her house. Presented documents did not document the attempt though Claimant’s testimony was credible. Claimant’s testimony is less alarming when factoring that Claimant conceded that she was not taking anti-depressant medication at the time of the attempt. Still, Claimant was described as a “moderate” risk for suicide as of 12/2013.

Claimant testified that depression caused her to lose 40 pounds over the last 3 months. Claimant’s testimony was credible, though unverified.

Anhedonia, decreased energy, and suicidal ideation were recurring themes within presented documentation. Overall, the evidence sufficiently verified Claimant meets Part A of the above listing.

As noted, above, presented documents were often imperfect. Documentation of restrictions, Claimant’s GAF, and Claimant’s testimony tended to support that Claimant has numerous marked restrictions which preclude the performance of employment.

Based on the presented evidence, it is found that Claimant’s symptoms meet the SSA listing for affective disorders. Accordingly, it is found that DHS improperly denied Claimant’s MA application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person’s basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

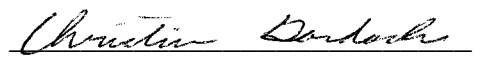
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet SSA Listing 12.04. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

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 and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED], including retroactive MA benefits from 3/2013;
- (2) evaluate Claimant's eligibility for benefits subject to the finding that Claimant is a disabled individual;
- (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 **REVERSED**.


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

Date Signed: 11/26/2014

Date Mailed: 11/26/2014

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

CG/hw

cc:

