

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002855
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: August 28, 2014
County: Isabella County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on **August 28, 2014**, from **Lansing**, Michigan. Participants on behalf of Claimant included Susann Carman, the Claimant, and [REDACTED], Friend. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist, and [REDACTED], Hearing Facilitator.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On December 13, 2013, Claimant applied for SDA.
2. On April 29, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On May 5, 2014, the Department notified Claimant of the MRT determination.
4. On May 15, 2014, the Department received Claimant's timely written request for hearing.
5. On July 28, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.

6. Claimant alleged disabling impairments of anxiety, panic attacks, depression, post-traumatic stress syndrome, and headaches/migraines.
7. At the time of hearing, Claimant was 60 years old with a [REDACTED] birth date; was 5'7" in height; and weighed 172 pounds.
8. Claimant completed the 11th grade and has a work history of part time light housekeeping.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to

establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

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

Id.

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

In the present case, Claimant alleges disability due to anxiety, panic attacks, depression, post-traumatic stress syndrome, and headaches/migraines.

A December 2, 2013, records from the primary doctor's office documents diagnosis and treatment of chronic major depression, generalized anxiety disorder, PTSD, and panic attacks.

Records from Community Mental Health from October 2013 to January 17, 2014, document diagnosis and treatment of PTSD, anxiety disorder, and depressive disorder. On October 30, 2013, Claimant's Global Assessment of Functioning (GAF) was 44. It was noted that Claimant had been brutally raped and beaten by her husband in 2001 and her symptoms had recently increased since the recent discovery of his release. Financial issues regarding rent and medical care were also noted. A November 13, 2013, progress note indicated struggles with severe anxiety. A December 13, 2013, progress note indicated anxiety was more under control with the help of medication. A January 3, 2014, progress note documents discussion of setting small goals, such as going to a grocery store, but setting up for success by not going on a busy shopping day. A January 17, 2014, progress note indicates discussion of identifying other stressors that contribute to anxiety and depression, including relationships with her sons.

On March 13, 2013, Claimant attended a consultative mental status examination. Diagnosis was reported chronic health related concerns that interfere with her avoidance, anxiety, intrusive thoughts, and other symptoms consistent with a diagnosis of 309.81 posttraumatic stress disorder. It was noted that Claimant is able to understand, retain, and follow simple directions; can be expected to understand simple changes in the work environment; but reports her daily functioning negatively impacted by symptoms stemming from posttraumatic stress disorder and some unidentified health related concerns. Claimant's prognosis was guarded as she reported anxiety, avoidance, and additional health concerns (passing out) that interfere with her ability to maintain employment. A DHS-49E Mental Residual Functional Capacity Assessment indicated Claimant has no significant limitation with most of the listed activities, and only moderate limitation with the abilities to: work in coordination with or proximity to others without being distracted by them; and complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

Records from Community Mental Health from February 12, 2014 to August 15, 2014, document diagnosis and treatment of PTSD, panic disorder with agoraphobia, anxiety disorder, and depressive disorder. A February 12, 2014, progress note indicates medication was helping; however Claimant's physician was concerned about head trauma but was unable to perform the necessary testing due to insurance issues. Coping skills to deal with anxiety were discussed. A March 5, 2014, progress note indicated Claimant was overwhelmed with paperwork applying for state and federal disability benefits. An April 23, 2014, progress note documents Claimant's concerns from how the recent consultative mental status examination was conducted. The treating provider indicated that the DHS-49 E Mental Residual Functional Capacity Assessment checkbox form was viewed as being largely inaccurate in terms of Claimant's functioning and ability to perform daily tasks. On June 13, 2014, Claimant's GAF was 38. It was noted that Claimant has frequent panic attacks, feels on edge all the time, is hyper vigilant, wakes up terrified, has flashbacks, is afraid to leave her apartment and goes out as little as possible. It was noted Claimant had lost home care

jobs in her building due to being distracted and forgetful, which affected her income and she may lose her apartment. A July 11, 2014, medical review indicated an increase in anxiety, excessive worrying increased, more guilty feeling, continuing to feel sad, difficulty sleeping, and feelings of worthlessness continuing unchanged. A possibility of side effect from an increase in medication was noted. An August 15, 2014 medication review noted stress at the apartment complex, financial stress, continued guilty feelings, worsened social isolation, continuing to feel sad, and no change in sleep difficulties.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for 90 days; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of PTSD, panic disorder with agoraphobia, anxiety disorder, and depressive disorder.

Based on the objective medical evidence, considered listings included: 12.00 Mental Disorders. The records from the treating sources, Community Mental Health and the primary doctor's office, indicate Claimant has met or equaled listings 12.04 and/or 12.06. The opinion of the consultative examiner is given very little weight as all other medical records from treating sources document treatment of severe mental health impairments. Claimant's GAF actually decreased from 44 in October 2013 to 38 in June 2014. These GAF scores are indicative of serious symptoms and impairment in social, occupational, or school functioning. The treatment records are consistent with Claimant's testimony indicating severe symptoms and impairments leading to a loss of her part time light housekeeping work in the apartment complex, increased social isolation, and the documented issues with leaving the home for activities such as grocery shopping. Accordingly, the Claimant is found disabled at Step 3.

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

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

DECISION AND ORDER

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

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

1. Initiate a review of the application dated December 13, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for March 2015.
2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

Colleen Lack

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

Date Signed: **9/24/2014**

Date Mailed: **9/24/2014**

CL/hj

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.

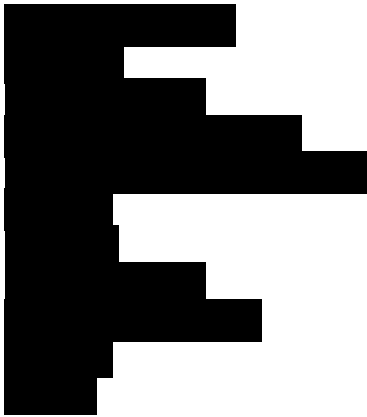
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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:

A large black rectangular redaction box covers the names and contact information of the individuals listed in the CC field.