

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003111
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 3, 2014
County: Kent #1

ADMINISTRATIVE LAW JUDGE: Susanne Harris

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, and in person hearing was held on September 3, 2014, from Grand Rapids, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator, [REDACTED]; Eligibility Specialist, [REDACTED] and Family Independence Manager, [REDACTED].

ISSUE

Whether the Department properly determined that Claimant was not disabled for purpose of the Medical Assistance (MA) 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 January 2, 2014, the Claimant applied for MA.
2. On March 18, 2014, the Medical Review Team determined that the Claimant was not disabled for the purpose of the MA program.
3. On April 28, 2014, the Department sent the Claimant notice that her application for MA was denied.
4. On May 19, 2014, the Department received the Claimant's written hearing request protesting the Department's action.
5. On June 26, 2014, the State Hearing Review Team also determined that the Claimant was not disabled for the purpose of the MA program.

6. [REDACTED], the Claimant is a [REDACTED]-year-old [REDACTED] who is 5'5" tall and weighs 235 pounds.
7. The Claimant can read, write and do basic math and has not been [REDACTED]
8. The Claimant alleges disability due to Degenerative Disk Disease, Neuropathy, Depression, and six bulging discs.
9. At the time of the hearing the Claimant was appealing the denial of her application for Social Security.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the Claimant's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the Claimant have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the Claimant is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, the Claimant is not engaged in substantial gainful activity and has not worked since [REDACTED]. Claimant is not disqualified from receiving disability at Step 1.

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 this case, the Claimant alleges disability due to Degenerative Disk Disease, neuropathy, depression, and six bulging discs. The objective medical evidence in the record indicates that the Claimant suffers from chronic pain, bulging discs, muscle spasms, lumbar stenosis, degenerative disc disease, hypertension, insomnia, bipolar disorder and severe anxiety and depression. The Claimant's treating physician reports that the Claimant can never lift more than 10 pounds and can only occasionally lift up to 10 pounds and that she can only stand and walk less than two hours in an eight hour day and that she cannot even sit two hours in an eight hour day. The Claimant's treating physician reports that the Claimant cannot use her extremities for repetitive actions of pushing/pulling and fine manipulating. The Claimant is capable of using her arms and hands for simple grasping and reaching and she can operate foot and leg controls. The Claimant's treating physician also reports that the Claimant is mentally limited in the following areas: comprehension, memory, sustain concentration and social interaction.

The record contains the results of an [REDACTED] dated [REDACTED]. The clinical impression of the Claimant's condition was as follows:

1. Multilevel mild degenerative disc and joined changes from L2-S1.
2. Focus increased signal mid-L3 vertebral body likely a focal area of fat or small hemangioma.
3. Probable L4 limbus defect with associated degenerative changes anteriorly at L3/4.
4. Right paracentral broad-based disc bulge at L5/1 contacting the budding S1 nerve root centrally, slightly more pronounced on the right.

The Claimant testified that she sustained her first bulging disk in [REDACTED] and now has six bulging discs. She testified that her depression has worsened after her bulging disc in [REDACTED].

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In this case, the Claimant's treating physician reports that the Claimant is moderately limited in dealing with the public and interacting with supervisors. She has marked to extreme limitations with dealing with work stresses, functioning independently, and maintaining attention and concentration. She is markedly limited with complex job instructions, behaving and emotionally stable manner, relating predictably in social situations, demonstrating reliability and with maintaining social functioning. She has extreme limitations in maintaining concentration, persistence or pace. The Claimant's treating physician indicates that the Claimant has had four or more episodes decompensation each of extended duration since at least [REDACTED].

The Claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. As summarized above, the Claimant has presented some limited medical/ psychiatric evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical/ psychiatric evidence has established that 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, Claimant is not disqualified from receipt of MA-P benefits under Step 2.

At Step 3, the trier of fact must determine if the medical evidence of Claimant's condition does give rise to a finding that she would meet a statutory listing in the code of federal regulations. Given the objective evidence, this Administrative Law Judge examined listing 12.04, and determines that the Claimant meets this listing. Specifically,

the Claimant does suffer from a depressive syndrome characterized by difficulty concentrating or thinking and she therefore meets the A criteria. Regarding the B criteria, the Claimant has marked difficulties in maintaining social functioning as well as maintaining concentration, persistence or pace. She also has repeated episodes of decompensation each of extended duration. As such, this Administrative Law Judge determined that the Claimant meets her burden of proof at Step 3, and finds that the Claimant is disabled for the purposes of the MA-P program.

DECISION AND ORDER

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

Accordingly, the Department's decision is REVERSED, and it is Ordered that:

1. The Department shall process Claimant's [REDACTED], MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Claimant's medical condition for improvement in [REDACTED], unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.



Susanne Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/15/2014**

Date Mailed: **9/16/2014**

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 Claimant;
- 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

SEH / tb

cc:

