

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

IN THE MATTER OF:



Reg. No.: 14-003974
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 22, 2014
County: WAYNE-19 (INKSTER)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a three way hearing was held on October 22, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. John Despelder of L&S Associates, the Claimant's Authorized Hearing Representative (AHR), also appeared. Participants on behalf of the Department of Human Services (Department) included Mohamad Elhajj, Medical Contact Worker.

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 November 13, 2013, Claimant applied for MA-P and retro MA-P to August 2013.
2. On February 14, 2014, the Medical Review Team denied Claimant's request.
3. On March 5, 2014, the Department sent the Claimant a Notice of Case Action. The Claimant's AHR submitted to the Department a timely request for hearing on June 2, 2014.
4. The State Hearing Review Team (SHRT) denied Claimant's request on July 11, 2014.

5. At the time of the hearing, the Claimant was 29 years old with a [REDACTED] birth date.
6. Claimant completed high school, completed some community college, and reported not doing well. At the time of the hearing, Claimant was 5'5" and weighed 95 pounds. The Claimant had lost weight due to her medications.
7. Claimant has employment experience as a fast food worker. The Claimant was fired from her job and also attempted suicide as a result.
8. The Claimant has alleged physical disabling impairments due to kidney stones.
9. The Claimant has alleged emotional impairments including anxiety attacks, and major depressive disorder.
10. Claimant's limitations have lasted for 12 months or more.
11. Claimant has significant limitations due to her emotional impairments.

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 uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

Claimant testified to the following symptoms and abilities: the Claimant testified credibly to anxiety attacks at least one to three times weekly. The Claimant experiences daily crying spells, and she continues to have thoughts of suicide, her appetite is depressed due to stress and her medications, and she has ongoing difficulty with concentration and difficulties with sleep.

The Claimant has alleged emotional impairments due to major depressive disorder and anxiety attacks. A summary of the Claimant's medical evidence follows.

On January 23, 2014, the Claimant was evaluated by a consultative doctor for an Adult Mental Status Evaluation. At the time of the exam, the Claimant was 5'5" tall and weighed 90 pounds. The diagnosis was major depressive disorder, recurrent moderate

with anxious distress, and generalized anxiety disorder. Claimant's prognosis was guarded and it was noted that the Claimant must be in mental health treatment. The examiner noted that the Claimant's mental ability to relate to others, including fellow workers and supervisors is moderately impaired, and while interacting with the examiner today, the Claimant was not able to form a rapport. Ability to understand, remember and carry out tasks appears to be mildly impaired. The Claimant was able to perform simple repetitive tasks while interacting with the examiner. The examiner opined that the Claimant could handle more complex tasks. Difficulty in performing multiple step tasks is minimal. The Claimant can do simple repetitive tasks. The Claimant's ability to maintain attention, concentration, persistence, pace and effort, is mildly impaired. Claimant's mental ability to withstand stress and pressure associated with day-to-day work activities is moderately impaired. Other issues that appear to impact Claimant are problems related to her social environment, occupational issues, economic problems and problems with access to mental health care services.

On October 10, 2013, the Claimant was seen at the hospital for flank pain and the diagnosis was kidney stones. At the time of the examination, the Claimant was 95 pounds with a BMI of 15.81.

On August 22, 2013, the Claimant was seen at the hospital for abdominal pain and left flank pain associated with nausea, without vomiting. A CT scan of the abdomen showed a 7 mm calculus within the left pelvis. The Claimant was admitted to the intermediate care unit. Anxiety regarding her admission was noted. The diagnosis was left ureteral calculus, urinary tract infection, leukocytosis secondary to above, depression and anxiety. At the time of this admission, the Claimant's weight was 93 pounds and her BMI was 15.53. Claimant was admitted to the hospital for at least one day.

Claimant is currently in treatment with a community mental health provider. It appears that she has been participating in treatment consistently based upon treatment records available since March 2014. Claimant receives psychotherapy weekly and medication reviews with a psychiatrist monthly.

An assessment update was conducted on June 17, 2014. At the time, the Claimant expressed that she was having anxiety and depression. The Claimant explained she was unhappy due to being poor, and having no work because of her anxiety and depression; she cannot go anywhere because she gets nervous around people and lacks appetite, suffers from insomnia and panic attacks. Claimant was evaluated as needy, depressed and anxious. Her communication ability was within normal limits and she was capable of taking care of her activities of daily living. The examiner noted that the Claimant had health problems, including kidney stones and was severely underweight. At the time of the evaluation, the GAF score was 50, and the diagnosis was depressive disorder and cannabis abuse. The Claimant was recommended to have a case manager, therapist, peer support and psychiatrist monthly. At the assessment on June 17, 2014, the Claimant's anxiety was reported as being very high such that she could not complete her application for [REDACTED]. At the time of the exam,

her symptoms were worsening and the anxiety was causing continuous stomach problems because of side effects to the medications. At that time, a crisis plan was recommended; however, the Claimant declined to participate. On May 16, 2014, Claimant called in with nausea and vomiting due to her medications, and additional medication was prescribed by her psychiatrist.

On May 2, 2014, the Claimant's psychiatrist completed a medication review. At the time, the note indicates that the Claimant was markedly depressed and quite anxious. She said that Klonopin did not help with her anxiety, and gave her vivid nightmares and left her feeling like a zombie. She was amicable to starting a new medication. The Claimant also related that she has been having suicidal thoughts, which bother her all day. The second medication review on April 24, 2014, noted that the drug, Vibrid, caused nausea and stomach cramps, which were debilitating for the Claimant. Claimant reported increased sweating and restless sleep with the medication. The Claimant took the medication for 19 days before she could not stand the side effects any longer. At the time, her affect was constricted, her mood was irritable and sad. Her anxiety was high. Claimant was taken off Vibrid based on this review.

A psychiatric evaluation was performed on March 25, 2014. The Claimant has reported onset of severe anxiety and depression since age 25. At the time of the evaluation, the Claimant reported episodic suicidal ideation, and reported feeling hopeless and helpless. Her last attempted suicide was in 2011. The Claimant's posture was slumped, her affect was constricted, her mood was anxious, sad and depressed. Her cognition was noted as obsessive/ruminative. The diagnosis was depressive disorder, cannabis abuse, and GAF was 50. On March 25, 2014, in an adult health assessment, the Claimant's height was 5'5" and her weight was 103 pounds with a BMI of 17.14. The Claimant complained that she had a lack of appetite. Claimant at that time reported continuing suicidal ideation, and three suicide attempts. The Claimant has vision problems with driving and panic attacks behind the wheel, and relies on her father for transportation due to feeling anxiety riding the bus. Claimant also reported under eating associated with her anxiety. The Claimant reported feeling agitated and aggressive, and was avoiding leaving the house.

On January 27, 2011, the Claimant was taken to the emergency room due to anxiety depression and thoughts of suicide. At that time, she was diagnosed as bipolar with rule out borderline personality disorder. The Claimant was hospitalized for a four-day stay. At the time of her admission, the Claimant came in with mood swings, anxiety, and depression along with suicidal thoughts and behaviors. At the time of this admission, her prognosis was guarded and her GAF score was 20-25. The Claimant indicated her willingness to undergo inpatient treatment.

On November 24, 2010, the Claimant was seen in the emergency room after attempting to hang herself. As a result of this attempt, the Claimant lost consciousness. As a result of this hospitalization, the Claimant was sent to Havenwyck for inpatient treatment. At the time of her admission the Claimant's diagnosis was major depression with a GAF of

25. The Claimant weighed 100 hundred pounds. At the time of her admission, the Claimant was placed on suicide precautions.

In July 2010, the Claimant was found in her house with slurred speech and was not reactive. The Claimant had potentially overdosed on an unknown quantity of Xanax. At the time, the Claimant was working part-time at [REDACTED]. At the psychiatric assessment, her speech was slurred, her affect was flat and her mood was depressed and tearful. Claimant's judgment was impaired and her insight was rated as little to none. The Claimant was diagnosed with depressive disorder, and a GAF score of 20. Claimant was admitted to the hospital for a one-day stay. The Claimant was seen by a psychiatrist for an evaluation while hospitalized, and at the time the impression was adjustment disorder with depressed mood, rule out dependent personality disorder. The GAF score was 40. The recommendation was the Claimant follow-up on an outpatient basis with counseling and psychiatry.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet Listing for 12.04 Affective Disorders. A. (a-c, e, f, and h); B. (2, and 4) or the medical equivalent. This determination was based on the Claimant's credible testimony at the hearing, the three prior suicide attempts, a low GAF score and her continued treatment without any significant improvement along with three documented suicide attempts. It is also noteworthy that the Claimant's continued weight loss and BMI ranging between 15 and 17.5 would meet the Listing for Digestive Disorders found in Listing 5.08 Weight Loss due to any digestive disorders; however, no ongoing digestive disorder is presented, only nausea and vomiting because of several of the psychotropic medications, which have required frequent change. Lastly due to the allege drug abuse (cannabis) it is determined that drug abuse is not a contributing factor which is material to Claimant's impairments and to this finding of disability. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

Therefore, Claimant is found to be disabled for purposes of MA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is Disabled for purposes of MA-P.

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. The Department shall re register and process the Claimant's application for MA-P dated November 13, 2013 and retro application for August 2013, and determine Claimant's non-medical eligibility if it has not already done so.
2. The matter shall be reviewed in November 2015.



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

Date Signed: **11/19/2014**

Date Mailed: **11/19/2014**

LMF/tm

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 48909-8139

cc:



AH