

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-006680
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: October 16, 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, a telephone hearing was held on October 16, 2014 from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's State Disability Assistance (SDA) eligibility 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 benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Claimant was a 41 year old female with a height of 5'6" and weight of 260 pounds.
7. Claimant has no known relevant history of alcohol or illegal substance abuse.
8. Claimant obtained a Bachelor of Arts degree with a major in accounting.
9. Claimant alleged disability based on restrictions related to diagnoses of bipolar disorder and borderline personality disorder.

CONCLUSIONS OF LAW

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.

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Claimant is a disabled individual. *Id.*, p. 3.

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. As noted above, SDA eligibility is based on a 90 days period of disability.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,060.

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 Evaluation (Exhibits 118-123) dated [REDACTED] was presented. It was noted that Claimant reported lifelong unhappiness. It was noted that Claimant took Lamictal, Abillify, and Trazadone for mood swings, but the meds did not help. It was noted that Claimant recently called a suicide hotline but that Claimant felt she did not receive any help. Notable observations of Claimant included the following: appropriate appearance, loud and fluent speech, no appearance of responding to internal stimuli, logical and organized thought process, euphoric mood, increased energy level, good insight, and poor judgment. It was noted that Claimant reported no problems with appetite, sleep, or suicidal ideation. Axis I diagnoses of bipolar disorder was noted. It was noted that Claimant has a distant history of drug abuse. Claimant's GAF was noted to be 55.

Various counseling and psychiatric progress notes (Exhibits 7-21; 27-106) from 6/2013-5/2014 were presented. On [REDACTED], it was noted that Claimant reported restraining herself from choking a coworker following a derogatory comment about women. On [REDACTED], it was noted that Claimant expressed anxiety over an upcoming throat surgery. On [REDACTED], it was noted that Claimant recently spent quality time with her father

while on a road trip. On [REDACTED], it was noted that Claimant was rude with a doctor due to receiving conflicting information about her illness (see Exhibit 44). Various noted goals as of 2/2014 included the following (see Exhibits 14-15): seeking employment, learning skills to address impulsivity, stopping smoking, and losing weight. On [REDACTED], it was noted that Claimant was overwhelmed with financial problems after losing her job (see Exhibit 10). It was noted that Claimant stopped attending therapy for several months because Claimant felt that staff were unresponsive to a suicide threat.

A Psychiatric Evaluation (Exhibits 22-26; 107-111; 113-117) dated [REDACTED] was presented. The evaluation was signed by a treating physician. It was noted that Claimant reported ongoing mood swings. It was noted that Claimant had difficulties relating to coworkers. Prescribed medications included Adderall and Topamax, Synthroid, Motrin, and metformin. Observations of Claimant included the following: orientation x4, intact memory, alert, normal concentration, good judgment, unremarkable thought content, unremarkable thought processes, normal stream of mental activity, unremarkable speech characteristics, unremarkable presentation, and appropriate affect. An Axis II diagnosis of borderline personality disorder was noted. Claimant's GAF was noted to be 51.

Presented evidence verified that Claimant has struggles with judgment and impulsivity. Claimant credibly testified that she lost many jobs due to lapses in judgments and self-control. For example, Claimant stated that she lost her most recent job after inquiring if she was invisible after a coworker ignored her; Claimant's actual inquiry was a tad more colorful. Claimant testified that she lost another job after giving her password to a coworker. Claimant recalled five jobs where she was fired. Claimant's testimony was consistent with a degree of difficulty with impulsivity and judgment. It is found that Claimant has social restrictions which impact Claimant's ability to perform employment. Accordingly, 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 bipolar disorder. Bipolar disorder 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.

Presented psychological treatment records tended to verify a degree of marked social restrictions. Restrictions to memory and daily activity performance were not apparent. There was also an absence of any periods of decompensation, that Claimant requires a highly supportive living arrangement or that she is so fragile that any increase in mental demands would cause decompensation. It is found that Claimant does not meet the SSA listing for affective disorders.

A consideration of personality disorders (Listing 12.08) was also considered based on a diagnosis of borderline-personality disorder. The listing was rejected for identical reasons resulting in rejection of Listing 12.04.

It is found that Claimant failed to establish meeting an SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant testified that the bulk of her past employment was as an accounts receivable specialist. Claimant testified that her duties were mostly accountant-like in nature. Claimant also testified that she also had to be aggressive in her duties which required her to collect on non-paying accounts.

Claimant testified that she has a history of working for 2 years before getting fired. Claimant also assumed that "it must be me" because she had been terminated from so many jobs. Claimant's testimony was not indicative of her always being the cause of her problems. For example, Claimant was written up for insubordination for having paper clips on her desk. Claimant also testified that she was once fired for inappropriate email usage for participating in a study group during her lunch hour. A third job was lost after

Claimant hit a coworker after getting hit. Claimant's testimony was suggestive that it is not always her.

There was little evidence that Claimant had any problem performing her actual job duties. Claimant's only apparent difficulty was handling challenging social encounters at work. Claimant would likely perform best in a smaller, informal and less corporate environment. Under better employment circumstances, Claimant would likely excel and receive the appreciation and respect that she likely deserves due to her work.

It should be noted that if Claimant did not have access to medication, a finding of disability would be more likely. Without medication, Claimant's behavior could devolve to the point of decompensation. It was not disputed that that Claimant is eligible for ongoing health insurance through the State of Michigan. Thus, access to medication is not a consideration in the disability analysis.

Claimant has reason to continue psychiatric treatment and counseling to address impulsivity and/or mood swings. The evidence, however, was not supportive that Claimant could not perform her past duties as an accountant. Accordingly, it is found that DHS properly denied Claimant's SDA application based on a determination that Claimant is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's SDA benefit application dated [REDACTED] based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



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

Date Signed: 11/3/2014

Date Mailed: 11/3/2014

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:

