

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-006891
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 16, 2014
County: Oakland (3) Southfield

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 September 16, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, [REDACTED], mother, and [REDACTED], [REDACTED], Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payments Supervisor.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The evidence was received and reviewed.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes 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 July 31, 2013¹, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On April 16, 2014, the Medical Review Team (MRT) found Claimant not disabled.

¹ The Department asserted the application date was August 2, 2013. However, the documents submitted with the hearing request include a fax transmission report showing successful transmission of 46 pages for Claimant's MA application on the morning of July 31, 2013 to a Department office in Wayne County. Pursuant to BAM 110, 7-1-2013, p. 5, the date of application is the date the local office receives the required minimum information on an application or the filing form. The date of application does not change for FIP, SDA, MA, CDC or AMP when the application is transferred to another local office.

3. On April 29, 2014, the Department notified Claimant of the MRT determination.
4. On July 18, 2014, the Department received Claimant's timely written request for hearing.
5. Claimant alleged disabling impairments including back pain, breathing and vocal cord problem, headaches, depression, anxiety, and panic attacks.
6. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; was 5'2" in height; and weighed 135 pounds.
7. Claimant completed some college and has a work history including waitressing.
8. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months 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.

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 disabling impairments including back pain, breathing and vocal cord problems, headaches, depression, anxiety, and panic attacks. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

A [REDACTED], mental health treatment record indicates treatment for depression.

On [REDACTED], Claimant was seen in the emergency department for depression and worsening anxiety. It was noted that Claimant was currently in an outpatient rehab program for substance abuse.

Claimant completed an intensive substance abuse treatment program in [REDACTED].

Claimant was incarcerated in [REDACTED].

Claimant was hospitalized [REDACTED], due to attempting suicide by intentional overdose. In part, the records document that Claimant had seizures following opioid overdose and was intubated for respiratory failure. Claimant's history of substance abuse was noted. It was also noted that Claimant has a known past medical history of major depressive disorder and panic disorder with prior mental health hospitalizations. Claimant was discharged to another hospital for an inpatient psychiatric hospitalization.

Claimant was hospitalized [REDACTED], for recurrent major depression and substance abuse. It was noted that Claimant has a past medical history of major depression, anxiety, opiate abuse, and chronic back pain.

Claimant attended individual and group counseling for at least [REDACTED].

[REDACTED], ear, nose and throat records document that Claimant was seen for breathing problems since being intubated for a week after the suicide attempt. Bilateral vocal cord paralysis was documented. On [REDACTED], a video stroboscopic exam was completed. The conclusion documents right more than left vocal cord paralysis, pica ventricularis, trouble breathing, and voice having returned near totally to normal.

Mental health treatment records from [REDACTED] document complaints including trouble with concentration, depression, anxiety and panic attacks. It was noted that Claimant last attempted suicide in [REDACTED] when she overdosed on Seroquel. It appears that the older diagnosis information from [REDACTED] was carried over into the more recent medical records. Diagnoses were dysthymic disorder and a history of substance abuse.

Mental health treatment records from [REDACTED] document Claimant having ongoing complaints including depression, being miserable with all of the medications she is on, wheezing, and vocal cords needing to heal. Again, the older diagnosis information from [REDACTED] was carried over into the more recent medical records.

A [REDACTED], ear, nose and throat record documents bilateral severe vocal cord paresis and questionable paralysis. This was noted to be accounting for some of Claimant's shortness of breath. Claimant had audible inspiratory respiration.

A [REDACTED], mental health discharge record documents that Claimant missed two doctor appointments in May 2014.

An [REDACTED], office visit record documents diagnoses of backache, recurrent major depression, and headache. It was noted that the backache was due to a motor vehicle accident two years ago.

[REDACTED] progress notes indicate treatment for chronic back pain and headaches.

A [REDACTED], mental health treatment record documents a diagnosis of neurotic depression. Claimant reported she was not doing well, the medications have not worked.

A [REDACTED], DHS-49 Medical Examination Report from a treating chiropractor documents diagnoses including myalgia, radiculitis, pelvic obliquity, neck pain/stiffness, headaches, bilateral hand numbness, mid back pain, right shoulder pain, low back pain/stiffness, and bilateral hip pain. Physical limitations were expected to last

more than 90 days and included lift/carry up to 10 pounds frequently, lift/carry up to 25 pounds occasionally, and stand/walk about 6 hour in an 8 hour workday.

██████████, records indicate Claimant started with a new mental health and medical provider. Problems included anxiety, depression and back pain. Mental health symptoms were noted to be poorly controlled. Claimant presented with anxious/fearful thoughts, depressed mood, difficulty concentrating, difficulty sleeping, excessive worry, racing thoughts and restlessness. A poor response to medications was noted. The anxiety was associated with trembling.

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, or can be expected to last, continuously for twelve months; 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 chronic back pain, headaches, bilateral vocal cord injury, depression, anxiety, history of substance abuse.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, and 12.00 Mental Disorders. The medical records indicate Claimant meets or equals listings 12.04 and/or 12.06. Claimant has a documented long history of depression and anxiety, with past psychiatric hospitalizations as well as the ██████████ suicide attempt by intentional overdose. The recent mental health records note treatment with several medications that have not been very effective. In ██████████ ██████████ Claimant presented with anxious/fearful thoughts, depressed mood, difficulty concentrating, difficulty sleeping, excessive worry, racing thoughts and restlessness. Overall the treatment records support the testimony of Claimant and her mother regarding Claimant's ongoing mental health symptoms and how they affect her daily life as well as how they would affect her in a work setting. Accordingly, the Claimant is found disabled at Step 3.

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 MA 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 July 31, 2013, for MA-P and retroactive MA-P, 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 February 2016.
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
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/12/2015**

Date Mailed: **2/12/2015**

CL/jaf

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:

