

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007883
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: October 09, 2014
County: CALHOUN (DISTRICT 21)

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 three-way telephone hearing was held on October 9, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED] [REDACTED] Authorized Hearing Representative (AHR). Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator and Eligibility Specialist.

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 November 5, 2013, Claimant applied for Medicaid (MA-P) and retroactive MA-P.
2. On March 18, 2014, the Medical Review Team (MRT) found Claimant disabled for the SDA program but not disabled for MA-P and retroactive MA-P.
3. On March 21, 2014, the Department notified Claimant of the MRT determination.
4. On June 16, 2014, the Department notified the AHR of the MRT determination.
5. On July 17, 2014, the Department received Claimant's timely written request for hearing.

6. Claimant alleged disabling impairments including: back, neck, and shoulder pain; insomnia; depression; and anxiety.
7. At the time of hearing, Claimant was 45 years old with a [REDACTED], birth date; was 5'4" in height; and weighed 145 pounds.
8. Claimant completed some college and has a work history including fixing windshield chips and restaurant management.
9. 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. Claimant testified she is working part time fixing windshield chips. Claimant has flexibility with her schedule, works about 15 hours per week and earns \$700 or a little less per month. Claimant's earnings from this part time work are not sufficient to be considered 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, neck, and shoulder pain; insomnia; depression; and anxiety. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

February 2013 through October 2013, mental health treatment records document diagnoses including personality disorder (301.9), mood disorder (296.90), rule out post-traumatic stress disorder (309.81), and adjustment disorder with mixed anxiety and depressed mood (309.28).

May and October 2013, office visit records document diagnoses of generalized anxiety disorder, insomnia, malaise/fatigue, depressive disorder, and chronic pain syndrome.

Claimant was hospitalized October 30, 2013 through November 6, 2014, after jumping out a third story window trying to hurt herself. The records indicate a past medical history of chronic back pain, compartment syndrome, degenerative disc disease, fibromyalgia. Prior procedures included back surgery, fasciotomy, multiple knee surgeries, and multiple gynecological surgeries.

Claimant was hospitalized November 6-14, 2013, for bipolar disorder with depression and recent suicide attempt by jumping off a third floor window, left pubic ramus fracture with non-operative treatment recommended by pervious facility, L1 burst fracture, status post T11-L3 fusion and T12-L1 and L1-L2 laminectomy, chronic pain, fibromyalgia, mild

asthma by history, and restless leg syndrome. Discharge diagnoses were stable bipolar disorder, controlled pain due to multiple fractures, anemia due to surgeries prior to this admission, and stable chronic pain. Claimant had been transferred to this facility for ongoing psychiatric management of depression and bipolar disorder.

A November 20, 2013, office visit record documented diagnoses of chronic pain syndrome, depressive disorder, and back disorder noting fracture due to fall.

November and December 2013 mental health treatment records document diagnoses of anxiety disorder (300.00), depressive disorder (311), personality disorder (301.9), mood disorder (296.90), and rule out post-traumatic stress disorder (309.81). The records also note Claimant discussed the challenges of using a walker and limited mobility. A November 27, 2013, medication review note documented objective findings including limited insight into her illness, poor judgment, and fair impulse control.

A February 19, 2014 progress note from the doctor treating Claimant's back noted Claimant was 4 months status post posterior spinal fusion T11-L3 for an L1 burst fracture. Claimant had been unable to go for outpatient physical therapy due to a lack of insurance.

An April 2014 DHS-49 Medical Examination Report from the internal medicine doctor documented diagnoses of lumbago, insomnia, chronic pain, and depression. Physical limitations included lift/carry up to 20 pounds occasionally, stand/walk less than 2 hours in an 8 hour work day, sit less than 6 hours in an 8 hour work day, and unable to use upper extremities for pushing/pulling. Mental limitation with memory was also marked.

January 2014 to April 2014, mental health treatment records document diagnoses of mood disorder (296.90), rule out post-traumatic stress disorder (309.81), and personality disorder (301.9). A March 18, 2014, medication review note documented objective findings including developing some insight into her illness, fair judgment, and fair impulse control. Personality disorder was improving.

A July 28, 2014, treatment record from the internal medicine doctor documented ongoing lumbago, chronic pain syndrome, insomnia, and depressive disorder.

An August 20, 2014, progress note from the doctor treating Claimant's back noted back pain, bilateral foot pain, neck pain, and closed fracture of the lumbar vertebra with spinal cord injury subsequent encounter. Foot x-rays demonstrated anticipated degenerative changes and deformities. Spine x-ray demonstrated stable position of the implants. Neck x-rays demonstrated some mild degenerative changes at multiple levels.

Claimant was hospitalized September 18-29, 2014, for bipolar disorder. Claimant presented to the emergency room with increased suicidal ideation with plan. It was noted that Claimant has a history of depression with two prior serious suicide attempts.

An October 13, 2014, record from a trauma foot and ankle specialist documented and described Claimant's acquired foot deformity. Exam findings included ambulating with a relatively broad based gait and exaggerated heel strike bilaterally, somewhat unsteady in her gait, and bilaterally symmetric "claw" deformities of the great and lesser toes.

This doctor noted available surgical interventions for some of the foot problems, but was not convinced they would improve Claimant's function in terms of ambulation and balance or overall pain. Claimant's symptoms appeared to be from a more central origin, most likely a result of the L1 burst fracture and lumbar spine pathology. Use of an assistive device was recommended to help with balance and stability.

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 multiple conditions, including bipolar disorder, depression, anxiety, mood disorder, personality disorder, chronic pain syndrome, history of chronic back pain as well as the recent spine injures, and foot pain with deformities.

Based on the objective medical evidence, Claimant appears to meet or equal the criteria for listings 11.04B and/or listing 12.04. Accordingly, the Claimant is found disabled at Step 3.

However, even if the analysis were to continue, Claimant would also be found disabled at Step 5 because the evidence was also sufficient to establish that Claimant the does not maintain the residual functional capacity to sedentary work as defined by 20 CFR 416.967(a) on a sustained basis due to her combination of physical and mental impairments.

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 November 5, 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 October 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
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/27/2015**

Date Mailed: **2/27/2015**

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 48909-8139

CC:

