

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

IN THE MATTER OF:

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Reg. No.: 14-010673
Issue No.: 2009
Case No.: ██████████
Hearing Date: November 05, 2014
County: MACOMB-12 (MT CLEMENS)

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, an in person hearing was held on November 5, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. █████ █████ █████ █████ Claimant's Authorized Hearing Representative (AHR), also appeared. Participants on behalf of the Department of Human Services (Department) included ██████████ Hearing Facilitator.

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 April 14, 2014, Claimant applied for MA-P and retro MA-P (January 2014).
2. On June 23, 2014, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated June 23, 2014 denying the Claimant's MA-P application.
4. On September 10, 2014, Claimant's AHR submitted to the Department a timely hearing request.

5. An Interim Order was issued on November 6, 2014, requesting additional medical evidence be provided by Claimant/AHR.
6. Claimant is 53 years old with a birth date of [REDACTED].
7. Claimant completed the 9th grade.
8. Claimant has no past full time employment experience.
9. Claimant alleges physical impairments due to diabetes mellitus and peripheral neuropathy with pain in feet, numbness and tingling in her fingertips, and high blood pressure.
10. The Claimant alleges mental disabling impairments including bi-polar disorder and depression.
11. Claimant's limitations have lasted for 12 months or more.

CONCLUSIONS OF LAW

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).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Claimant’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the Claimant’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then the Claimant is not disabled. If the Claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1. The Claimant’s medical evidence referenced below also satisfies the requirement of severity of her impairment thus satisfying Step 2 of the required analysis.

The Claimant has alleged physical disabling impairments including diabetes mellitus, uncontrolled and peripheral neuropathy in both feet with pain, numbness and tingling in her fingertips, and hypertension.

The Claimant also alleges bi-polar disorder and depression.

A summary of the medical evidence presented in this case follows.

The Claimant was evaluated by a therapist on October 28, 2014, in a very detailed evaluation. The report notes that the Claimant used a cane to ambulate. The records also document a twenty-year psychiatric history since her teenage years. The evaluator noted that the current symptoms included anxiety, restlessness, mood swings, marked irritability decreased concentration, decreased sleep and racing thoughts. At the time of the evaluation, the Claimant was receiving individual psychotherapy as well as medications. The exam notes indicate that the Claimant was mildly paranoid and her mood was moderately depressed and anxious. Insight and judgment were fair, and difficulty with serial numbers in naming three objects after a pause. By way of history, the Claimant explained that somedays she is unable to get out of bed and does not complete her activities of daily living and is relatively housebound. The Claimant socializes only with siblings. She cannot stand or walk for periods of time due to bilateral neuropathy, as a result of her diabetes. At the time of the exam, the Claimant was diagnosed with bi-polar disorder and anxiety disorder due to medical issues. The GAF score was 45, and the Claimant was noted as unable to manage her benefit funds.

A mental residual functional capacity assessment was also completed with marked limitations in understanding and memory regarding ability to remember locations and work like procedures. Marked limitations in sustained concentration and persistence as regards ability to carry out detailed instructions and ability to maintain attention and concentration for extended periods. In addition, marked limitations were noted in ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances. Also markedly limited in the ability to sustain an ordinary routine without supervision or work in coordination with or in close proximity to others without being distracted, and lastly the ability to complete a normal workday and worksheet without interruptions from psychologically based symptom and to perform at a consistent pace without an unreasonable number and length of rest periods. The Claimant's ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes, as well as the ability to accept instructions and respond appropriately to criticism from supervisors, was also noted. The Claimant was markedly limited in all categories of adaptation including ability to respond appropriately to change in the work setting, ability to be aware of normal hazards and take precautions, and ability to travel in unfamiliar places or use public transportation. Further comments included low vision, unstable blood sugars, and cannot stand for periods of time due to neuropathy.

A further evaluation was completed by the Claimant on December 14, 2014 by her treating psychiatrist. The psychiatrist completed a Medical Source Statement which noted that the Claimant's ability to understand, remember and carry out instructions is affected by her impairment. The Claimant was evaluated as poorly capable, which is defined, as no useful ability to function with regard to understanding and remembering detailed instructions, carry out detailed instructions, maintain attention and concentration for extended periods perform activities within a schedule, maintain regular attendance and be punctual and poorly capable to work with or near others without being distracted by them. The Claimant was also limited and rated poor in her ability to accept instructions and respond appropriately to criticism from supervisors, respond to changes in the work setting, awareness of normal hazards and ability to take appropriate precautions, travel in unfamiliar places and to set realistic goals, or make plans independently of others.

The Claimant had a total hysterectomy in January 2014 due to several massive fibroid tumors in her uterine area. The largest measuring 10.5 x 9.8 x 14.5 cm. This occurred in March 2014.

The Claimant's family practice Doctor who currently treats her provided a mental examination report dated November 18, 2014. The current diagnosis diabetes mellitus and diabetic neuropathy. At the time of the exam, the Claimant was 5'3" and weighed 181 pounds. The report noted that the Claimant ambulates with a cane due to her neuropathy and is unsteady. Her affect was mentally noted as flat, although she was alert and oriented. The assessment was that the Claimant had not improved and limitations were imposed which were intended to last more than 90 days. The Claimant could lift less than 10 pounds occasionally. The Claimant was unable to stand. The Claimant could not perform significant repetitive actions with either of her hands or arms and/or operate foot controls with either foot or leg. The medical findings to support the physical limitations were severe neuropathy affecting energy and gait.

During the hearing, the Claimant testified to lifelong mental problems starting in her teenage years, several suicide attempts and demonstrated a flat affect. The Claimant has had in-patient hospitalizations due to her mental impairments, the last being in 2010 due to an involuntary petition. Claimant credibly testified to frequent crying spells, often finding herself yelling with mood swings. She only associates with family members and has disrupted sleep habits and appetite. Claimant admitted to suicidal thoughts with no intent to carry them out. While the Claimant does have a drivers license, she does not drive and cannot walk far. The Claimant also testified she becomes extremely anxious around strangers and people she doesn't know in groups, occasionally hears voices and reads, but has problems remembering what she has read. The Claimant dropped out of school in the ninth grade due to mental illness issues. As regards her ability to do work around the house, the Claimant is often forgetful with regard to household tasks. The Claimant can read and write, but cannot perform multiplication and division. Claimant does not like to grocery shop; she does not like to be around other people and

keeps her blinds closed when home. She tends to stay in her bedroom and watch TV and occasionally forgets to shower.

The Claimant also testified to the following physical limitations, indicating she could stand for 10 minutes and no longer due to pain caused by her diabetic neuropathy. While sitting the Claimant's legs also swelled and hurt.. Due to her limitations, Claimant testified she could walk only one half block, does use a walker and a cane prescribed by her Doctor. The Claimant is right-handed and testified that her hands and fingertips are numb due to her neuropathy and believes she could carry less than a quart of milk, approximately 2 pounds.

The remainder of the categories were rated as fair, which was defined as the individual can perform the activity satisfactorily some of the time. These categories involved sustaining an ordinary routine without special supervision, remembering locations and work like procedures, and understand and remember short simple instructions, make simple work related decisions, complete a normal workday/week and perform at a consistent pace.

The medical findings supporting the evaluation included the Claimant's diagnosed bipolar disorder and generalized anxiety disorder secondary to medical issues. The evaluation noted the Claimant was losing her eyesight, inability to ambulate, and stand only for short periods of time, secondary to her diabetes. Noted also was the Claimant's difficulty paying attention and that she is basically distracted. The report also noted that the Claimant is frequently unstable with mood swings, is dependent on others for transportation due to vision impairments and diabetic neuropathy, causing her to have difficulty ambulating.

Listing 12.04 was examined in light of Claimant's lifelong and ongoing bi-polar disorder and anxiety related impairments. The Listing provides:

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. Bi-polar 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.

Based upon a review of the treating psychiatrist's evaluation which also includes confirmation of the Claimant's depression 12.04A and sleep disturbance, difficulty concentrating or thinking, easy distractibility, thoughts of suicide, decreased energy these conditions together with the remaining requirements of the listing for bi-polar syndrome 12.04B with marked restrictions of activities of daily living, difficulties in maintaining social functioning and difficulties in maintaining concentration, persistence or pace, it is determined that the Claimant has satisfied the requirements or its medical equivalent of listing 12.0 4B for bi-polar disorder and, therefore, is found disabled at Step Three of the analysis.

Additionally based upon the objective medical evidence, it is clear based upon the Claimant's treating physician's evaluation and the documented deteriorating nature of the Claimant's health as documented in the medical examination reports, as well as the mental status evaluation evaluating the Claimant with a GAF of 45, Claimant would also be found disabled at step five as well. Based upon her age of 53 and the fact that she has been evaluated as less than sedentary by her treating physician, the Claimant would be found disabled at step five as well.

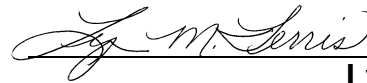
DECISION AND ORDER

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 purposes of the MA-P and/or SDA benefit program.

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 is ORDERED to initiate a review of the application dated April 14, 2014 and applicable retro application (January 2014), if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for January 2016.



Lynn Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/16/2015**

Date Mailed: **1/16/2015**

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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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