

5. On October 28, 2014, the Department received the AHR's timely written request for hearing.
6. Claimant alleged physical disabling impairment due to type 2 diabetes, fibroids, and fibromyalgia.
7. Claimant alleged mental disabling impairment due to bipolar disorder, depression, and anxiety.
8. At the time of hearing, Claimant was 53 years old with [REDACTED]; she was 5'1" in height and weighed 155 pounds.
9. Claimant has no employment history.
10. 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 found in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Bridges Reference Tables (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.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is 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(a). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, the trier-of-fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;

- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (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 to 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).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in

death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to type 2 diabetes, fibroids, and fibromyalgia and mental disabling impairment due to bipolar disorder, depression, and anxiety. The medical evidence presented at the hearing was reviewed and is summarized below.

Claimant was hospitalized [REDACTED] for a laparoscopic assisted vaginal hysterectomy and bilateral salping-oophorectomy. The doctor noted that, preoperatively, Claimant's diabetes mellitus was poorly controlled; an endocrine consultation was requested to assist in controlling her diabetes postoperatively. Claimant's operation was performed without complication; no malignancy of the surgical specimens was identified in the pathology reports. (Exhibit C, pp. 13-47.)

██████████ Claimant's primary care physician completed a DHS-49, medical examination report, identifying Claimant's diagnoses and chief complaints as diabetes mellitus, bipolar disorder, asthma, depression, fatty liver, and fibromyalgia. The doctor also noted that Claimant had hyperlipidemia, GERD, and memory loss (possibly related to a CVA). The doctor identified the following physical limitations: (i) Claimant could lift less than 10 pounds frequently (2/3 of an 8-hour day), 10 pounds occasionally (1/3 of an 8-hour day) and never 20 pounds or more and (ii) she could stand and/or walk less than 2 hours in an 8-hour day. The doctor indicated that Claimant had no limitations on her ability to use her hand/arms and feet/legs for repetitive actions. He indicated that Claimant had mental limitations in memory and social interaction and could not drive due to her bipolar medication.

Claimant had been attending mental health therapy but her case closed in June 2014 due to noncompliance. (Exhibit 1, pp. 25-27.) An initial evaluation ██████████ ██████████ showed that Claimant did not understand why her case had closed and requested that it be reopened. The doctor noted that Claimant reported auditory and visual hallucinations and had slowed psychomotor activity but no other unusual notations concerning affect, thought process, thought content, attention/concentration, speech, grooming, appetite, sleep, impulse control, judgment, or orientation. The doctor noted that Claimant was a poor historian and struggled to provide accurate details, dates and times. Claimant reported issues with comprehension, memory, and daily suicidal ideation. She also reported increased sadness, helplessness, hopelessness, and worthlessness and increased isolating behavior and issues with comprehension, memory, increased irritation and agitation and anger. Her diagnosis was identified as bipolar I disorder, most recent episode mixed, severe without psychosis. Her global assessment functioning (GAF) score was identified as 43. (Exhibit 1, pp. 14-24.) The medication review showed that Claimant was prescribed Cogentin, Elavil, Risperdal, Trileptal, and Xanax. (Exhibit 1, pp. 9-13.)

██████████ Psychiatric Evaluation listed Claimant's diagnosis as bipolar I disorder, most recent episode mixed, severe without psychosis and noted nondependent opioid abuse in remission. The evaluation noted that Claimant reported being stable on medication but having problems with memory and comprehension. Claimant reported a history of mood swings, depression and anxiety but a stable mood and no crying spells. She also reported longstanding auditory hallucinations and chronic suicidal ideation with no intent/plan. The doctor noted that Claimant's mood, affect, thought-content, psychomotor activity, attention/concentration, and speech were all within normal limits. No current hallucinations were noted. Her grooming, appetite, sleep, impulse control, judgment were either normal or adequate. Her global assessment functioning (GAF) score was identified as 48. (Exhibit 1, pp. 3-8.)

██████████ ██████████ ██████████ ██████████ Claimant's treating psychiatrist completed a psychiatric/psychological report, DHS-49D, identifying Claimant's diagnosis as bipolar disorder, most recent episode mixed, severe w/o psychosis. The doctor noted that Claimant suffered from chronic depression, with symptoms including passive suicidal ideation and daily struggles to get out of bed. The report indicated that Claimant took

medication daily to stabilize her symptoms. The doctor noted that Claimant was slow moving, had a flat affect, felt hopeless and worthless, but was oriented to person, place, time and self. The doctor also noted that Claimant could care for her daily needs but struggled to remember appointments and to drive to new places. The doctor listed Claimant's global assessment function (GAF) score at 50. (Exhibit 1, pp. 30-31.)

■■■■■ in connection with the DHS-49D, Claimant's psychiatrist completed a mental residual functional capacity assessment, DHS-49-E, regarding Claimant's mental impairments and how they affected her activities. The psychiatrist concluded that Claimant had no significant limitations regarding her ability to (i) ask simple questions or request assistance; (ii) interact appropriately with the general public; and (iii) be aware of normal hazards and take appropriate precautions. The psychiatrist concluded that Claimant had moderate limitations regarding her ability to (i) carry out simple one or two-step instructions; (ii) carry out detailed instructions; (iii) sustain an ordinary routine without supervision; (iv) work in coordination with or proximity of others without being distracted by them; (v) accept instructions and respond appropriately to criticisms from supervisors; (vi) get along with co-workers or peers without distracting them or exhibiting behavioral extremes; (vii) maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; (viii) respond appropriately to change in the work setting; and (ix) set realistic goals or make plans independently of others. The psychiatrist concluded that Claimant had marked limitations regarding her ability to (i) remember locations and work-like procedures; (ii) understand and remember one or two-step instructions; (iii) understand and remember detailed instructions; (iv) maintain attention and concentration for extended periods; (v) perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; (vi) make simple work-related decisions; (vii) complete a normal workday and worksheet without interruptions from psychologically-based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; and (viii) travel in unfamiliar places or use public transportation. (Exhibit 1, pp. 28-29.)

In consideration of the *de minimus* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination as to whether the individual'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 an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on evidence on the record concerning Claimant's type 2 diabetes, fibroids, and fibromyalgia, Listings 9.00 (endocrine disorders); and 14.00 (immune system disorders), particularly 14.09 (inflammatory arthritis), were considered. The medical evidence presented does **not** show that any of Claimant's physical impairments meet or equal the required level of severity of Listings 9.00 or 14.00.

Based on Claimant's diagnosis of, and treatment for, bipolar disorder, Listing 12.00 (mental disorders), particularly 12.04 (affective disorders) and 12.06 (anxiety-related disorders), were considered. An affective disorder under 12.04 is characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. The required level of severity for affective 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.

In this case, Claimant's mental condition satisfied at least four of the elements of 12.04.A.1: the August 11, 2014, initial evaluation, [REDACTED] psychiatric evaluation, and the [REDACTED], psychiatric/psychological report indicated that Claimant suffered from decreased energy; feelings of hopelessness and worthlessness; difficulty concentrating or thinking; thoughts of suicide; and auditory and visual hallucinations. Her condition also satisfied at least two of the elements in 12.04.B: in [REDACTED] mental residual functional capacity assessment, DHS-49-E, Claimant's psychiatrist indicated that Claimant had marked limitations in her ability to (i) remember locations and work-like procedures; (ii) understand and remember one or two-step instructions; (iii) understand and remember detailed instructions; (iv) maintain attention and concentration for extended periods; (v) perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances;

(vi) make simple work-related decisions; (vii) complete a normal workday and worksheet without interruptions from psychologically-based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; and (viii) travel in unfamiliar places or use public transportation. (Exhibit 1, pp. 28-29.) These limitations result in marked difficulties in Claimant's ability to maintain social functioning and concentration, persistence or pace, the elements of 12.04.B.2 and B.3. Because Claimant's mental condition satisfies four elements of 12.04A.1 and two elements of 12.04B, her mental condition is of a severity to meet or medically equal the criteria of Listing 12.04 of Appendix 1 of the Guidelines. Therefore, Claimant is disabled under Step 3 and no further analysis is required.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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. Process Claimant's February 16, 2014, MA application, with request for retroactive MA to November 2013, to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;
3. Review Claimant's continued eligibility in May 2016.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/24/2015**

Date Mailed: **4/24/2015**

ACE / tlf

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]
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