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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-015680
Issue No.: 4009
Case No.: [redacted]
Hearing Date: January 07, 2015
County: Macomb-District 20

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, telephone hearing was held on January 7, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [redacted], Hearing Facilitator.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. Certain requested documents were received by the record extension date. The record was closed on February 20, 2015, and the matter is now before the undersigned for a final determination.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the State Disability Assistance (SDA) 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 October 3, 2014, Claimant submitted an application for public assistance seeking SDA benefits.

2. On October 21, 2014, the Medical Review Team (MRT) found Claimant not disabled.

3. On an unknown date, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.

4. On November 10, 2014, the Department received Claimant's timely written request for hearing.

5. Claimant alleged physical disabling impairment due to back pain, shoulder pain, and headaches.

6. Claimant alleged mental disabling impairment due to bipolar disorder, post-traumatic stress disorder (PTSD), and anxiety.

7. On the date of the hearing, Claimant was [redacted] with a [redacted], birth date; she is [redacted] in height and weighs about [redacted].

8. Claimant graduated from high school and has some college attendance.

9. Claimant has an employment history of work as a factory worker, waitress, and catering worker.

10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days 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 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 disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

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 substantial gainful activity (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 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 SDA 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 90 days. 20 CFR 416.922; BEM 261, p. 2.

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 mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (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).

In the present case, Claimant alleges physical disabling impairment due to back pain, shoulder pain, and headaches and mental disabling impairment due to bipolar disorder, PTSD, and anxiety. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

A hand-written psychiatric assessment completed February 24, 2014 was included in Claimant's medical record. The assessment is signed by a doctor but it is unclear whether the doctor treated Claimant. The assessment indicates that Claimant reported that her husband threatened her and her daughter and then committed suicide in December 2013. Claimant reported suicidal thoughts but the doctor found no current suicidal or homicidal ideation or perceptual disturbance. The doctor indicated that Claimant had a neat appearance, cooperative attitude, anxious and dysphoric mood, and coherent speech. Claimant was found to have logical thought process and appropriate thought content and to be fully-oriented. Her attention/concentration, memory and insight were fair. She was diagnosed with bipolar, mixed type and given a global assessment functioning (GAF) score of 50.

In an August 21, 2014 initial intake from [redacted] signed by [redacted], Claimant reported being diagnosed with bipolar disorder by her primary care physician years ago and again by her psychiatrist at TTI in 2010. She reported a recent hospitalization for psychiatric care in June 2014 for 2 days but

would not explain why. Claimant reported that her husband committed suicide in the home they shared in [redacted] after threatening her and her daughter and since then she had experienced flashbacks of the gunfire while in the home. She reported disliking crowds, losing many friends after her husband's suicide, and having anger issues. Based on Claimant's statements, the doctor indicated that there were issues concerning suicidal ideation and experiencing and witnessing trauma. In the mental status exam, the doctor identified Claimant as having agitated behavior, unremarkable communication, unremarkable thought process; angry, fearful, anxious, and dysphoric mood, fair impulse control; fair insight; decreased sleep and decreased appetite. The doctor listed Claimant's diagnosis as PTSD, bipolar I disorder, single manic episode, unspecified; and identified her current GAF as 38. The following diagnostic formulation was entered:

> [Claimant] experiences recurrent and intrusive distressing recollections of the event; intense psychological distress at exposure to internal or external cues which resemble an aspect of the traumatic event; physiological reactivity; efforts to avoid activities, places or people that arouse recollection of the trauma; feeling of detachment or estrangement from others; markedly diminished interest or participation in significant activities; difficulty falling or staying asleep; and irritability or outbursts of anger. She has experienced the disturbance for the last 8 months and the disturbance causes clinically significant distress socially and occupationally.

An August 1, 2014 x-ray of Claimant's spine showed bilateral spondylolysis deformities at L5, with a very mild spondylolisthesis of L5 in relation to L4 and S1 measuring perhaps 3 mm. The vertebral body heights were all well-maintained with no significant spurring. All intervertebral disc spaces were well-maintained, and the remaining vertebral bodies are well-aligned.

On September 19, 2014, Claimant's doctor completed a DHS-49, physical examination report, identifying her diagnoses as back pain, shoulder pain, headache, and bipolar. The doctor indicated that Claimant's physical examination was normal except that she appeared thin and fatigued, her mental status was depressed, and she experienced right shoulder pain at elevation of 80 degrees. The doctor indicated Claimant was stable and identified the following limitations: (i) she could lift up to 20 pounds occasionally (1/3 of an 8 hour day) but never more; and (ii) she could not use her right arm or hand to reach or to push or pull. The doctor indicated that Claimant could stand and/or walk about 6 hours in an 8-hour day; she could use both legs to operate foot and leg controls; and she could use both hands and arms to grasp and do fine manipulating. He identified mental limitations with respect to her comprehension, sustained concentration, following simple directions and social interaction but suggested contacting Claimant's psychiatrist.

On February 13, 2015, Claimant's psychiatrist since November 4, 2014, completed a psychiatric/psychological examination report, DHS-49D, and mental residual functional

capacity assessment, DHS-49E. In the DHS-49D, the psychiatrist reported that Claimant was very depressed, tearful, and anxious. Claimant admitted that her depression had started at an early age but was exacerbated by her husband's [redacted] suicide. According to the doctor, Claimant was alert and oriented to time, space and location and her abstract thinking was according to age. However, her memory was impaired and her judgment was fair. She heard voices and saw dead people. The doctor identified Claimant's diagnoses as PTSD; major depressive disorder, severe, with psychosis; bipolar I and assessed her global assessment functioning at 40, up from 38 the prior year, and concluded that Claimant's ability to function independently was compromised due to her severe depression, anxiety and intermittent suicidal thoughts.

The psychiatrist also 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 moderate limitations regarding her ability to (i) understand and remember one or two-step instructions; (ii) carry out simple one or two step instructions; (iii) sustain an ordinary routine without supervision; (iv) interact appropriately with the general public; (v) ask simple questions or request assistance; (vi) be aware of normal hazards and take appropriate precautions; and (vii) travel in unfamiliar places or use public transportation. The psychiatrist concluded that Claimant had marked limitations regarding her ability to (i) remember locations and work-like procedures; (ii) understand and remember detailed instructions; (iii) carry out 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) work in coordination with or proximity of others without being distracted by them; (vii) make simple work-related decision; (viii) 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; (ix) accept instructions and respond appropriately to criticisms from supervisors; (x) get along with co-workers or peers without distracting them or exhibiting behavioral extremes; (xi) maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; (xii) respond appropriately to change in the work setting; and (xiii) set realistic goals or make plans independently of others. In the comments section, the psychiatrist wrote in "very disturbed, anxious, psychotic at times."

The psychiatrist attached a copy of the November 4, 2014 psychiatric evaluation performed when Claimant first began seeing her, supporting her February 2014 examination report.

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 90 days. 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 if 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.

The evidence shows diagnosis of, and treatment for, back and shoulder pain and headaches. Based on the objective medical evidence of back and shoulder pain and headaches, Listings 1.00 (musculoskeletal system), particularly 1.02 (major dysfunction of a joint) and 1.04 (disorders of the spine), and 11.00 (neurological) were reviewed. The medical evidence presented does **not** show that Claimant's physical impairments meet or equal the required level of severity of any of these listings to be considered as disabling without further consideration.

Claimant also alleges mental impairments. Her medical records showed diagnosis of, and treatment for, and for PTSD, bipolar I disorder, and major depressive disorder, severe, with psychosis. In light of the record presented, Listing 12.00, particularly Listings 12.03 (schizophrenic, paranoid and other psychotic disorders), 12.04 (affective disorders), 12.06 (anxiety-related disorders), and 12.08 (personality disorders), were reviewed.

Particular attention is drawn to the requirements of a listing under 12.04 for anxiety-related disorders. In anxiety related disorder, anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders. The required level of severity to satisfy a listing under 12.04 is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied:

A. Medically documented findings of at least one of the following:
   1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
      a. Motor tension; or
      b. Autonomic hyperactivity; or
      c. Apprehensive expectation; or
      d. Vigilance and scanning; or
   2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
   3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
   4. Recurrent obsessions or compulsions which are a source of marked distress; or
   5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home.

With respect to 12.06(A), there are medically documented findings to support category (5), that Claimant has recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress. In this case, the psychiatric evaluation completed February 24, 2014; the August 21, 2014 initial intake from [redacted]; the November 4, 2014 psychiatric evaluation; and the February 13, 2015 psychiatric/psychological evaluation examination report, DHS-49D, all reference Claimant reporting that her husband had committed suicide in [redacted] in the home they shared.

The August 21, 2014 initial intake includes the following remarks:

> [Claimant] experiences recurrent and intrusive distressing recollections of the event; intense psychological distress at exposure to internal or external cues which resemble an aspect of the traumatic event; physiological reactivity; efforts to avoid activities, places or people that arouse recollection of the trauma; feeling of detachment or estrangement from others; markedly diminished interest or participation in significant activities; difficulty falling or staying asleep; and irritability or outbursts of anger. She has experienced the disturbance for the last 8 months and the disturbance causes clinically significant distress socially and occupationally.

Although these comments were entered by a limited licensed professional counselor, whose opinion is not an acceptable medical source, the initial intake was signed by a psychiatrist, who is an acceptable medical source. SSR 06-03p. In the November 24, 2014 psychiatric evaluation, the doctor noted that Claimant's depression "was exacerbated by the sudden death of her husband who committed suicide almost a year ago" and that Claimant reported continuing to feel guilty all the time about her husband's death. The medical evidence presented was sufficient to establish that Claimant experienced recurrent and intrusive recollections of a traumatic experience, namely her husband's suicide in their shared home, which are a source of marked distress.

The medical evidence also established that Claimant's condition resulted in marked mental impairments with respect to at least two of the categories identified in (B). In the mental residual functional capacity assessment completed on February 13, 2015, Claimant's psychiatrist concluded that Claimant had marked limitations regarding her ability to (i) remember locations and work-like procedures; (ii) understand and remember detailed instructions; (iii) carry out 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) work in coordination with or proximity of others without being distracted by them; (vii) make simple work-related decision; (viii) 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; (ix) accept instructions and respond appropriately to criticisms from supervisors; (x) get along with co-workers or peers without distracting them or exhibiting behavioral extremes; (xi) maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; (xii) respond appropriately to change in the work setting; and (xiii) set realistic goals or make plans independently of others. In the comments section, the psychiatrist wrote in "very disturbed, anxious, psychotic at times." Claimant's GAF score in her most recent assessment was 40, which also supports marked limitations in Claimant's mental ability to perform basic work activities.

The restrictions identified by Claimant's psychiatrist were sufficient to establish that Claimant's condition resulted in marked restrictions of activities of daily living; marked difficulties in maintaining social functioning; and marked difficulties in maintaining concentration, persistence, or pace. Therefore, Claimant's mental impairment satisfies the requirements of 12.06(B).

Because the medical evidence establishes that Claimant's mental impairments satisfy the requirements in 12.06(A) **and** (B), these impairments meet, or are equal to, the required level of severity of Listing 12.06 to be considered as disabling without further consideration.

Accordingly, Claimant is found **disabled** and no further analysis is required.

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. Reprocess Claimant's October 3, 2014 SDA application 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 March 2016.

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

Date Signed: **3/6/2015**

Date Mailed: **3/6/2015**

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]