

**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.: 2013-48887
Issue Nos.: 2009, 4009
Case No.: ██████████
Hearing Date: January 15, 2014
DHS County: Wayne County (82)

ADMINISTRATIVE LAW JUDGE: Lynn M. 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 January 15, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ also appeared as a witness for the Claimant. The Claimant's Authorized Hearing Representative and attorney, ██████████ also appeared on Claimant's behalf. Participants on behalf of the Department of Human Services (Department) included ██████████, FIM and ██████████, Eligibility Specialist.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program and 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 March 12, 2013, the Claimant submitted an application for public assistance seeking MA-P and SDA.
2. On May 8, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)

3. The Department notified the Claimant of the MRT determination on May 22, 2013.
4. On May 22, 2013, the Department received the Claimant's written request for hearing.
5. On January 28, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued October 31, 2013. The new evidence was submitted to the State Hearing Review Team on February 21, 2014.
7. On May 5, 2014, the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to back pain.
9. The Claimant has alleged mental disabling impairments due to major depressive disorder, anxiety, ADHD and learning disorder, as well as mental retardation resulting in intellectual disability with a global IQ score of 50.
10. At the time of hearing, the Claimant was 52 years old with a [REDACTED] birth date. The Claimant is now 53 years of age. Claimant is 5'4" in height; and weighed 120 pounds.
11. The Claimant has past employment doing janitorial work. The Claimant has an 8th grade education.
12. The Claimant's impairments have lasted or are expected to last for 12 months duration or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 –

400.3180. Department policies are found in BAM, BEM, and RFT. 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.

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 413.913. 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 (e.g., 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 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). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is working part-time and does not reach the substantial gainful activity earnings level and therefore 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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 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).

The Claimant has alleged mental disabling impairments due to major depressive disorder, anxiety, ADHD and learning disorder as well as intellectual disability.

The Claimant has alleged physical disabling impairments due to back pain.

A summary of the Claimant's Medical evidence follows.

On February 9, 2014, IQ testing and a Mental Status Examination was conducted. The Claimant presented as being adequate, overt contact with reality with no evidence of an overt thought disorder. Claimant appeared to be an accurate historian without evident tendency to exaggerate or minimize symptoms. Claimant answered questions generally in a logical, goal directed fashion without loose, circumstantial or tangential associations. The examiner noted the Claimant said she hears things but does not know what, she feels others are against her, and that at her work they do not like part-time workers. She reported suicidal thoughts at times but denied attempts. The Claimant also advised that most often she feels depressed, gets down on herself and has no friends except her sister. The Claimant could not do any of the math calculations stating she did not know how to multiply or divide etc. The Claimant could not respond to abstract thinking questions such as the grass is greener on the other side of the fence. When asked about her plans for the future, the Claimant responded, I don't know, I'm at a dead-end level. An IQ test was also administered and the examiner indicated Claimant did appear to put forth adequate effort on testing and the results are felt to represent a valid accurate measure of her present intellectual functioning Claimant's intellectual functioning was measured to lie in the mildly retarded range, with index scores of verbal comprehension 63, perceptual reasoning 52, working memory 55, processing speed 53 in the borderline range and a full scale IQ of 50 verbal

comprehension was significantly higher than perceptual reasoning. The results of the Mental Status Examination indicated a diagnosis of ADHD, combined type per Claimant, and depression. GAF score was 51, and prognosis was fair. The examiner also opined that in light of the Claimant's difficulties with calculations, she was not felt to be capable of managing her own benefit funds.

The results of the intellectual functioning test found the Claimant mildly retarded. The examining psychologist found the Claimant to have put forth adequate effort on the testing. The examiner also opined that the test results were believed to represent a valid and accurate measure of the Claimant's present intellectual functioning. Index scores of verbal comprehension 63, perceptual reasoning 52, working memory 55, processing speed of 53 in the borderline range, and full scale IQ was determined to be 50.

The treatment records from [REDACTED] were reviewed and do not assess the Claimant's IQ. The GAF score has consistently been 45 and the diagnosis was Major Depressive Disorder recurrent and ADHD with hyperactivity. They demonstrate a long history of depression since the age of 12 – 13, and history of ADHD and anxiety and past psychiatric hospitalization. When last seen by her psychiatrist in February 2014, the Claimant presented as sad and depressed. A Mental Residual Functional Capacity Assessment presented the Claimant is not significantly limited in ability to carry out instructions of simple one and two step instructions and markedly limited in the ability to maintain attention and concentration for extended periods. The Claimant was moderately limited in the ability to perform activities within a schedule, maintain regular attendance and be punctual, the ability to work in coordination with or proximity to others without being distracted, and the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without unreasonable number and length of rest periods. As regards social interaction, the Claimant was noted as not significantly limited; with regard to adaptation the Claimant was moderately limited in ability to respond to changes in the workplace, use public transportation, and travel in unfamiliar places. The GAF score at that time was 45. No improvement was noted.

At the time of the hearing, the Claimant had been in treatment for her mental impairments and psychiatric problems for one year. At this time, she is seen one time a month and is limited in treatment options due to lack of insurance. The records indicate most services involve care coordination and assistance with applications and gathering information. Therapeutic intervention was minimal and only one psychiatric evaluation was found. It is unclear from the records if the doctor completing the February evaluation was a treating psychiatrist. Noteworthy, was Claimant's concern for lack of emotional counseling, and comments in several instances in meetings with her care coordinator; the notes indicate that the Claimant complained of not receiving real counseling and assistance from the psychiatrist who sees her for only a few minutes.

For these reasons, the evaluation provided in February 2014 is disregarded as not indicative of a true evaluation of the Claimant's mental status.

The Claimant credibly testified that her mental impairments had been with her throughout her life, first being diagnosed with depression as a child and struggles daily with depression, anxiety and lack of concentration due to her ADHD and as a result struggles with not being able to know what to do. Claimant testified credibly that her memory is poor, her appetite is depressed and she limits her social interactions to her sister. She further testified to crying spells on a daily basis due to sadness. At the hearing, the Claimant appeared notably anxious, distressed, tearful and sad and had a flat unemotional affect. The Claimant also openly complained that her depression was not improved and was depressed because she could not see a therapist.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. Accordingly, 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 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.

Listing 12.05 was examined in light of the Claimant's intelligence IQ testing results. The Listing requires the following:

12.05 Intellectual disability: intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less.

Based on the evaluation of Claimant by the consultative psychologist who administered the IQ testing which resulted in the global IQ's test score of 50, it is determined that deference must be given to this evaluation, as the examiner indicated that the Claimant was cooperative and applied appropriate effort to the examination and that the test results were believed to represent a valid and accurate measure of the Claimant's present intellectual functioning. Index scores of verbal comprehension 63, perceptual reasoning 52, working memory 55, processing speed of 53 in the borderline range, and full scale IQ was determined to be 50.

Therefore, it is determined based upon the objective medical evidence and a review of the entire record, that the Claimant is found disabled, at Step 3 as Listing 12.05 Intellectual Disability is met and thus no further analysis required.

As the Claimant has been found disabled for Medical Assistance based on disability she is also deemed disabled for the State Disability Assistance program.

DECISION AND ORDER

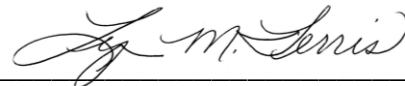
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

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 March 12, 2013 for MA-P and SDA, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits which the Claimant was otherwise entitled to receive in accordance with Department Policy.
3. A review of this case shall be set for June 2015.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 30, 2014

Date Mailed: June 30, 2014

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the Claimant 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 the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

2013-48887/LMF

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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