

**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.: 2014-12191
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 2, 2014
County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 June 2, 2014, from Taylor, Michigan. Participants on behalf of Claimant included Claimant ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████.

The record was extended to allow additional relevant medical evidence to be submitted. Claimant waived timeliness. The Department supplied copies of the identified hospital and emergency room visits indicated during the hearing. Claimant and/or her representative were allowed the same time to provide a new DHS-49 from Claimant's treating family physician, a DHS-49 from the Claimant's treating cardiologist and a DHS-49D and a DHS-49E from her treating mental health provider. Claimant and/or Claimant's representative failed to supply any additional documentation.

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On August 16, 2013, Claimant applied for MA-P and SDA.
2. On October 24, 2013, the Medical Review Team denied Claimant's request.

3. On November 7, 2013, Claimant submitted to the Department a request for hearing regarding the denial of MA benefits. No request for hearing was filed regarding the SDA denial.
4. SHRT denied Claimant's request.
5. Claimant is 29 years old.
6. Claimant completed education through an Associate's Degree.
7. Claimant has employment experience (last worked August 2013) in retail sales which required her to stand/walk the majority of the shift, limited sitting and lifting 6 pounds.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from depression, anxiety, asthma, allergies, vertigo, polycystic ovaries, diabetes, prior knee surgery [REDACTED], prior heart attack [REDACTED] high blood pressure and high cholesterol.
10. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has some limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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. However, Claimant’s impairments do not meet a listing as set

forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with depression, anxiety, asthma, allergies, vertigo, polycystic ovaries, diabetes, prior knee surgery, prior heart attack, high blood pressure and high cholesterol. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treatment records included the following.

Claimant went to the emergency room for weakness and dizziness. She was treated and released with a diagnosis of dizziness likely as result of vasovagal. Claimant went to the emergency room, complaining of shortness of breath. Claimant was discharged with a diagnosis of community acquired pneumonia. Claimant went to the hospital for shortness of breath. She was discharged with a diagnosis of acute exacerbation of asthma. Claimant was admitted to the hospital for breathing issues. She was treated and released on. Claimant's discharge diagnosis was acute exacerbation of asthma. On Claimant was admitted to the hospital for suicidal thoughts. She was assigned a GAF of 15-20 at admission. She was treated and her condition improved and she was released. Claimant's prognosis, however, was listed as guarded.

A DHS-49 completed and signed by a physician indicated Claimant suffered with vertigo and non-insulin-dependent diabetes. Claimant's condition was listed as stable. Claimant was limited to lifting 10 pounds frequently and occasionally up to 25 pounds. Claimant was found capable of standing/walking about 6 hours in an 8-hour day. Claimant was noted to be capable of sitting about 6 hours in an 8-hour day. Claimant was found capable of using both her hands/arms and legs/feet for repetitive movements. No mental restrictions were noted. Claimant was found capable of meeting her own needs in her own home.

a DHS-49E Mental Residual functional Capacity Assessment was completed and signed by a non-physician indicating Claimant was not significantly limited in 4 areas of the assessment. She was found to be moderately limited in 5 areas and markedly limited in 11 areas of the assessment.

psychiatric evaluation indicated Claimant had a GAF of 50. This physician further noted Claimant's diagnosis as major depressive, single episode, moderate with psychotic features. Claimant was noted to have good grooming, timeliness, orientation times four, sadness, irritable behavior, good eye contact, normal speech, visual hallucinations, paranoid delusions, and average intelligence. Claimant was determined to have no current suicidal thoughts, intent or plan.

Claimant testified to the following symptoms and abilities: suicidal thoughts daily, gets really depressed, she avoids people, racing thoughts, poor concentration, has issues with hearing voices, anger issues, has issues with throwing things at people, crying

spells occurring monthly, daily panic attacks, has mood swings with highs occurring every other day, smokes in order to calm herself down, joints hurt when it rains, not able to walk any distance when it rains, on a non-raining day she can walk 3-4 blocks, can stand 4 hours, no issues with sitting, no lifting over 6 pounds, grip and grasp okay, not able to bend or squat, not motivated to do household chores, can handle personal care, she can manage her own grocery shopping but gets help with carrying the groceries, not able to drive due to no license and struggles with sleeping at night, she is insulin-dependent, asthma problems in the fall and spring, ongoing heavy menstrual bleeding, both knees hurt and swell. She takes medications as prescribed and has issues with being drowsy and sleeping.

Claimant's witness testified that Claimant has reported pain in her ovaries. Claimant has enlarged stomach at times and had suffered with dizziness. Her dizziness problems were resolved with diagnosis and treatment of her diabetes. Claimant sleeps a lot. Claimant is taking medications for bipolar disorder and depression. She has periods of wanting to take her life. Her medications are helping. She reports heavy menstrual bleeding.

The severity of symptoms and restrictions on daily activities that Claimant alleged during the hearing are not supported by the objective medical evidence.

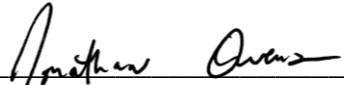
The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, Claimant's past employment was in retail sales which required her to stand/walk the majority of the shift, limited sitting and lifting 6 pounds. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that Claimant is capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

Based upon the above finding, Claimant is found not disabled at this step of the analysis. Claimant has not presented sufficient objective medical evidence to demonstrate she would be incapable of performing the duties required for her past employment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is not medically disabled.

Accordingly, the Department's decision is hereby UPHELD.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 28, 2014

Date Mailed: October 28, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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 48909-07322

JWO/pf

2014-12191/JWO

cc:

[REDACTED]
[REDACTED]
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