

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

**IN THE MATTER OF:**



Reg. No.: 2014-15585  
Issue No.: 2009  
Case No.:   
Hearing Date: March 24, 2014  
County: Wayne (18)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 24, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included , Medical Contact Worker.

**ISSUE**

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

**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 , Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On , the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing a MA and SDA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20
7. As of the date of the administrative hearing, Claimant was a 46-year-old female with a height of 5'2" and weight of 130 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12<sup>th</sup> grade.
10. As of the date of the administrative hearing, Claimant had no medical coverage.
11. Claimant alleged disability based on impairments and issues including bipolar disorder, depression and anxiety.

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

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);

- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).  
BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden 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 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person

is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1<sup>st</sup> Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1<sup>st</sup> Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant

evidence may be considered. The analysis will begin with background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant testified that she spent 23 years as a bartender/bar manager. Claimant testified that sexual harassment she endured in her employment led to a psychiatric hospitalization in 2007. Claimant testified that she returned to bartending work for another two years but was unable to continue the employment due to the fragility of her mental health. Claimant testified that she attends therapy appointment 2 times per week, ongoing for 4 years.

A handwritten Psychiatric Evaluation (Exhibits 42-44) dated [REDACTED] from a treating psychiatrist was presented. It was noted that Claimant reported the following symptoms: decreased energy, crying spells and feeling overwhelmed. An Axis I diagnosis of depression was noted. Claimant's GAF was noted to be 51. A fair prognosis was noted.

Various handwritten mental health agency treatment documents (Exhibits 45-105) were presented. The documents ranged in date from [REDACTED] through [REDACTED] and verified semi-regular monthly treatment appointments for Claimant. On [REDACTED], it was noted that Claimant reported improving her sleeping to 6 hours per night. On [REDACTED], it was noted that Claimant is feeling better. On [REDACTED], Claimant's sleep was reported as good. On [REDACTED], it was noted that Claimant's sleep and appetite were good.

A Final Report (Exhibits 8-12) dated [REDACTED] from a hospital was presented. It was noted that Claimant presented with complaints of right upper quadrant pain. It was noted that Claimant felt better after taking protonix. A discharge prescription of Prilosec was noted. Claimant's diagnosis status was noted as improving.

A handwritten medical center document (Exhibit 13) dated [REDACTED] was presented. "Her marijuana card" was legibly noted but other information was illegible.

A Psychiatric/Psychological Examination Report (Exhibits 14-16) and Mental Residual Functional Capacity Assessment (Exhibits 20-21), both dated [REDACTED] were presented. The forms were completed by a treating psychiatrist with an approximate two-year history of treating Claimant. Axis I diagnoses of bipolar disorder and anxiety disorder were noted. Claimant's GAF was noted to be 51. It was noted that Claimant was markedly restricted in 20 of 20 listed work abilities.

A mental examination report (Exhibits 30-34) dated [REDACTED] was presented. The report was completed by a licensed psychologist with no history of treating Claimant. It was noted that Claimant reported a lack of interest in all activities. It was noted that Claimant takes care of her elderly father but does little else. Noted observations of Claimant by the examiner included the following: no reported hallucinations, logical and goal directed, reported depression and anxiousness, and in contact with reality. Axis I diagnoses of psychosis (in reported remission) and depression were noted. Claimant's GAF was noted to be 51. A fair prognosis was noted.

Presented evidence suggested a claim of disability based on body pain. Claimant's testimony conceded that she has no physical restrictions.

Presented evidence verified that Claimant receives therapy and medications to treat depression. Claimant testified that she suffers anxiety and only feels safe in familiar places. Claimant's testimony was consistent with the presented medical evidence.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, it is found that Claimant has a severe impairment and the disability analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant'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 Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

The presented evidence persuasively verified that Claimant has restrictions due to depression. Depression is an affective disorder covered by Listing 12.04 which reads as follows:

**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. 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.

The most compelling evidence of restrictions was the MRFCA which found Claimant to be restricted in all listed work-related abilities. Listed abilities included: remembering 1 or 2 step instructions, carrying out 1 or 2 step instructions, maintaining concentration for extended periods, completing a normal workday without psychological interruption, maintaining customary attendance and punctuality standards, interacting appropriately with the public, and responding appropriately to work setting change.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6<sup>th</sup> Cir. 2007). Though Claimant's treating psychiatrist noted that Claimant has many marked restrictions, the opinion was not persuasive.

At the outset of therapy, Claimant's GAF was noted to be 51. A consulting psychologist noted the same GAF over two years later. The Diagnostic and Statistical Manual of

Mental Disorders (4<sup>th</sup> edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Thus, Claimant's GAF is representative of someone with only moderate restrictions, not marked restrictions.

Other evidence was also supportive in finding that Claimant did not have marked restrictions. Claimant's treatment documents consistently noted that Claimant had no side effects, no delusions, no suicidal ideation and had improved affect. It was also consistently noted that Claimant reported feeling better.

Claimant appeared to be the sole caretaker for her elderly father. If Claimant was so markedly restricted that she could not remember or carry out 1-2 step instructions, she would seem to be an inappropriate person to perform caretaking duties. The seemingly exaggerated restrictions tainted all of Claimant's psychiatrist statements concerning Claimant restrictions.

It was also established that Claimant does not have psychiatric hospitalizations in the last six years, attended ongoing psychological treatment and regularly received anti-depressant medication. This evidence was suggestive in finding that Claimant's condition improved since 2011 and that she has no marked restrictions. Based on the presented evidence, it is found that Claimant does not have marked restrictions.

Claimant's testimony implied that she has difficulty functioning outside of her house and/or that the stress of employment could cause decompensation. The presented evidence was less supportive of such a finding.

As noted above, Claimant performs caretaker duties for her father. There was little evidence suggesting that Claimant could not perform similar duties outside of her parent's home.

Based on the presented evidence, it is found that Claimant does not meet the listing for affective disorders or any other SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical

and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant performed past employment as a bartender and bar manager. Claimant testified that she is unable to perform her past employment because it directly led to psychological problems; Claimant's testimony was sensible. It is found that Claimant is unable to perform her past employment due to the potential of decompensation and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

As noted in step two, Claimant did not allege any exertional restrictions. Thus, the analysis will focus solely on Claimant's non-exertional restrictions.

In step three, it was determined that Claimant did not have marked restrictions. The evidence was suggestive that Claimant has anxiety, some degree of restrictions in social interactions and maintaining concentration. The evidence also was suggestive that Claimant would need a supportive work environment. At least, Claimant is capable

of performing simple and repetitive employment requiring little social interaction. DHS did not present reasonable employment options for Claimant, but Claimant is not deemed to be so restricted so that such vocational data was necessary. It is found that Claimant is capable of performing simple employment and is found to not be a disabled individual. Accordingly, it is found that DHS properly denied Claimant's MA application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

The Michigan Administrative Hearing System may grant a hearing about any of the following:

- denial of an application and/or supplemental payments;
- reduction in the amount of program benefits or service;
- suspension or termination of program benefits or service
- restrictions under which benefits or services are provided;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

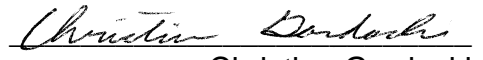
BAM 600 (7/2013), p. 3.

Claimant's hearing request noted a dispute concerning SDA eligibility. Claimant testified that she was pretty sure that she did not apply for SDA benefits. DHS did not have Claimant's application available to verify Claimant's testimony, but DHS stated that a list of programs applied for by Claimant was available. The testifying DHS specialist stated that Claimant had not applied for SDA benefits. Based on the presented evidence, it is found that Claimant did not apply for SDA benefits. Accordingly, it is found that DHS did not deny SDA benefits to Claimant and that Claimant is not entitled to an administrative hearing concerning SDA benefits.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to establish an adverse SDA decision by DHS for which an administrative decision is appropriate. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated [REDACTED] based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.

  
Christian Gardocki  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 4/16/2014

Date Mailed: 4/16/2014

**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

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

CG/hw

cc:

