

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-16933
Issue No(s): 2009, 4009
Case No.: [REDACTED]
Hearing Date: April 3, 2014
County: Kent County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, a telephone hearing was held on April 3, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant and [REDACTED], son. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Family Independence Manager, and [REDACTED], Eligibility Specialist. [REDACTED] Departmental Analysts [REDACTED] and [REDACTED] were present as observers.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit programs?

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 2, 2013, Claimant applied for Medicaid (MA-P), retroactive MA-P and SDA.

2. On November 23, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On November 27, 2013, the Department notified Claimant of the MRT determination.
4. On December 2, 2013, the Department received Claimant's timely written request for hearing.
5. On February 6, 2014, and June 5, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged physical disabling impairments of bulged disk and pain all over body.
7. Claimant alleged mental disabling impairments due to anxiety, panic attacks and depression.
8. At the time of hearing, Claimant was 48 years old with a [REDACTED], birth date; was 4'11" in height; and weighed 138 pounds.
9. Claimant has a high school education and has a work history of factory work, CNA, and farm work.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are 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.

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 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 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, 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 (i.e. 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 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 an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 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 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 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 not involved in substantial gainful activity. Therefore, Claimant 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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
6. 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).

In the present case, Claimant alleges disability due to bulged disk, pain all over body, depression, panic attacks and anxiety.

A November 7, 2013 Biopsychosocial assessment indicates panic attacks have been treated with medication, but Claimant's symptoms are getting worse. There was a recent ER visit for a panic attack and Claimant has a fear of being by herself as well as fear of being around people. Claimant was also noted to have moderately severe depression that was worsening. Claimant's Global Assessment of Functioning (GAF) was 42 on September 23, 2013. Additional records from the mental health provider show ongoing treatment for anxiety and depression with GAF's of 44 on November 11, 2013, and 46 on January 22, 2014. On the January 22, 2014 medication review signed by the doctor, it is noted that Claimant still has panic attacks three times per week, high level continuing anxiety, and diagnoses of depression, panic attacks, generalized anxiety disorder, post-traumatic stress disorder and agoraphobia with panic disorder.

On September 12, 2013, Claimant was seen in the Emergency Department for an anxiety attack.

October 2013 through April 2014 records from Claimant's doctor document chronic problems of: low back pain; depression; abnormal glucose; dysthymic disorder; signs and symptoms in breast; anxiety state, and unspecified hyperlipidemia.

2012 records from Claimant's doctor document Claimant has attempted to go back to work around August 2012 with a letter for work restrictions, the employer was not following the restrictions, and Claimant stopped working due to back pain. An August 6, 2012 work/school status note stated Claimant could return to work with permitted activities of: lifting 20 pounds maximum, frequently 10 pounds; walking or standing to significant degree; and sitting with pushing and pulling or arm/leg controls. On August 12, 2012, the doctor indicated Claimant could return to work with no restrictions. On September 13, 2012, the doctor indicated Claimant could return to work but should not stand more than 4 hours in one day in addition to the previous restrictions she was given.

An August 1, 2011 clinical progress note documents diagnoses of left L2-3 disc herniation that is inconsistent with Claimant's specific complaints of left leg pain, low back pain, and left lower extremity pain. The doctor noted that he talked with Claimant about the natural history of disc herniations and that 80-85% of them resolve.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that 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. The evidence confirms recent diagnosis and treatment of depression, anxiety, panic attacks, and history of low back pain.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, and 12.00 Mental Disorders. The medical evidence was not sufficient to meet the intent and severity requirements of any 1.00 listing, or its equivalent. However, the testimony at hearing and the medical records indicate Claimant meets the requirements of listing 12.06. The medical records indicate Claimant has a long history of mental impairments, including anxiety. On the January 22, 2014 medication review signed by the doctor, it is noted that Claimant still has panic attacks three times per week and high level continuing anxiety. Diagnoses were depression, panic attacks, generalized anxiety disorder, post-traumatic stress disorder and agoraphobia with panic disorder. Claimant's GAF remained between 42 and 46 between September 2013 and January 2014. Claimant has been prescribed multiple anxiety-related medications and was noted to be compliant with medications. The records from the counseling center document that Claimant has had problems in many areas, including eating, sleeping, neglect of self care, and isolating self. While the February and March 2014 group therapy notes indicate some improvements with controlling emotions and fears, Claimant testified the depression and anxiety recently worsened due her uncle and nephew being killed. Claimant provided testimony describing her frequent panic attacks, problems with concentration/focus, and drowsiness from medications. Claimant's son provided testimony describing panic attacks he has witnessed when Claimant was driving or if they go out to eat. Claimant's son also described crying spells. Claimant's son tries to remind and encourage Claimant to get up and do something, rather than just be in bed all day. The testimony of Claimant and her son regarding mental impairments is found credible and is supported by the objective medical evidence. Accordingly, the Claimant is found disabled at Step 3.

In this case, the Claimant is also found disabled for purposes SDA benefits as the objective medical evidence also establishes a mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Claimant's impairments did preclude work at the above stated level for at least 90 days.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and SDA benefit programs.

DECISION AND ORDER

Accordingly, 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. Initiate a review of the application dated October 2, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for September 2015.
2. Issue the Claimant any supplement he may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 5, 2014

Date Mailed: August 5, 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

201416933/CL

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

CL/hj

cc:

