

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

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Reg. No.: 2014-17946
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: April 16, 2014
County: Wayne County DHS 43

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, a telephone hearing was held on April 16, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or 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 July 26, 2013, the Claimant submitted an application for public assistance seeking MA-P and SDA benefits.
2. On November 26, 2013, the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on December 2, 2013.
4. On December 9, 2013, the Department received the Claimant's timely written request for hearing.

5. On February 11, 2014, the State Hearing Review Team (“SHRT”) found the Claimant not disabled.
6. An Interim Order was issued April 17, 2014, ordering the Department to schedule a consultative psychiatric examination and completion of a DHS 49 D and E, and have IQ testing performed. After follow up with the Department, the Department did not submit any of the new evidence ordered by the Interim Order and did not schedule a consultative psychiatric exam as ordered..
7. The Claimant alleges physical disabling impairments due to low back pain with limited range of motion requiring use of cane, arthritis in both knees, obesity, diabetes, and hypertension.
8. The Claimant has alleged mental disabling impairments including Schizophrenia and bipolar disorder as well as depression.
9. At the time of hearing, the Claimant was 43 years of age with a [REDACTED] birth date. Claimant is 5’5” in height; and weighed 326 pounds and has gained some weight. The Claimant has a 6th grade education and cannot do math, and reads only a little.
10. The Claimant has prior employment experience as a home care giver and last worked in 2005. The Claimant is not currently working.
11. 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 1396-1396-5, 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 not involved in substantial gainful activity 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 means 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 alleges physical disabling impairments due to low back pain with limited range of motion requiring use of cane, arthritis in both knees, obesity, diabetes, and hypertension.

The Claimant has alleged mental disabling impairments, including Schizophrenia and bipolar disorder, as well as depression.

A summary of the Medical Evidence presented follows.

The Claimant had a consultative examination on September 7, 2013, and was examined for alleged disability due to asthma, diabetes, headaches, mental illness, depression, arthritis and back pain.

At the time of the examination, the Claimant weighed 304 pounds and her height was 5'7". The Claimant had crepitus with flexion and extension of both knees. There was obvious spinal deformity noted and muscle spasm. The Claimant reported for the exam with a cane and used it during the examination. The Claimant did not believe she could get on the table and did walk with a limp on the right side. She stated she could not do tandem walk, heel walk or toe walk. The Claimant was able to squat 70% of the distance and recover to get in the chair and bend to 70% of the distance. A slow gait was noted. The impression was noted history of arthritis affecting multiple joints, primarily knees and back. The examiner noted the Claimant was using her cane for balance and support with a slight limp on the right side. The impression also noted chronic back pain and referred to the range of motion sheets. The neurologic and orthopedic report noted Claimant could stand, bend, stoop, carry, and push with pain, as well as experienced pain getting on and off the examining table, squatting and arising from a squat and climbing stairs. The Claimant's straight leg raising in a seated position was negative. The clinical evidence did support use of a cane to reduce pain.

A psychiatric examination was conducted on July 11, 2013 with Claimant's current mental health treatment provider. During the exam, the Claimant reported talking with dead people at night and denied harmful commands. The Claimant's average sleep was reported as three and a half hours per night, and she noted that sometimes she felt like harming people. The report notes inpatient admissions and two or three suicide attempts. The lasted admit was in summer of 2012 when she took a bottle of sleeping pills, the Claimant had no memory of what pills that she took. The report notes the Claimant had used crack cocaine for three years, but had been clean for one year. Claimant noted that she could not read, she finished fifth grade and has difficulty with memory and what her childhood was like. During the examination, the Claimant's behavior was normal and unremarkable, affect was constricted, perception noted hallucinations present which were non-commanding, memory was noted as impaired and insight was fair, judgment was fair, and the Claimant was oriented to person place and things at the time of the examination. The Claimant was evaluated as having a GAF score of 35 and was diagnosed with bipolar disorder most recent episode depressed. The report noted that cocaine dependence was in remission.

On October 11, 2013, the Claimant was seen by her psychiatrist for medication review. The Claimant reported that her mood was still down and the dosage of Cymbalta was increased. Claimant was also continued on anti-psychotic drugs. There was no change in diagnosis. The reason given for continued monitoring and support was so that the Claimant could remain stable in the community and accomplish her goals. The report noted Claimant was compliant with her medications, but has yet to progress further. She is unable to maintain a positive stable mood without medication.

During the Claimant's DHS intake interview for her MA-P interview, the caseworker noted answering was delayed, memory problems and understanding.

A consultative Medical Mental Status exam was performed on September 7, 2013. At the exam, the Claimant reported hearing voices and could not remember anything. She cried as she talked about her symptoms and problems. The Claimant was found by the examiner to be accurate historian without evident tendency to exaggerate or minimize symptoms. She also reported sleep disruption due to voices talking to her as she was attempting to sleep. The Claimant could not spell her name out loud but could laboriously print it with several letters backwards and did not know the date. The Claimant could not perform calculations in her head. Her plans for the future was answered "I want to go home with my daughter". The diagnosis was schizoaffective disorder, combined type, crack cocaine dependence in reported long-term remission and anti-social personality disorder. The GAF score was 51 and prognosis was only fair. She was deemed not capable of managing her funds due to calculation difficulties and past history of substance dependence.

At the hearing, the Claimant credibly testified that she suffers from an inability to sleep due to persistent voices and has difficulty being around crowds of people. Claimant suffers daily from hearing voices and is largely dependent on her daughter to assist her with food preparation, laundry, and has difficulty going up and down stairs and walking any distance. The Claimant could walk only one block slowly, stand for 14 minutes and sit for 30 minutes, she cannot get out of the bathtub herself, and needs assistance tying her shoes. The Claimant's legs swell and she has pain in both knees due to arthritis. The Claimant thought she could carry 8 pounds.

The Claimant also credibly testified that she hears both voices and sees things described as dead people. She does not concentrate well and loses track of things, and thus needs assistance with cooking as she burns her food. The Claimant only interacts with her family and attempted suicide one month prior to the hearing. No medical records were provided with regard to the suicide attempt. The undersigned observed the Claimant as somewhat confused and slow to speak, and unable to remember dates or specific details.

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. Thus a Step 3 analysis is required.

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.

In light of the Claimant's medical evidence Listing 12.003 Schizophrenic, paranoid and other psychotic disorders; Anxiety Related Disorders was examined. The Listing requires:

12.03 Schizophrenic, paranoid and other psychotic disorders: Characterized by the onset of psychotic features with deterioration from a previous level of functioning. 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 or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect;

OR

4. Emotional withdrawal and/or isolation;

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;

After review the psychiatric evaluations by both the treating psychiatrist who the Claimant has seen since December 2011, and a consultative examination ordered by the Department, the objective medical evidence does establish that the Claimant does exhibit the following medically documented findings. The Claimant has documented both visual and auditory hallucinations and associated emotional withdrawal and or isolation and thus satisfies the requirements of part A.1 and 4. The objective medical evidence also supports that part B.1, 2, and 3 are met as the Claimant has demonstrated marked restrictions of daily living, difficulties in maintaining social

functioning and marked difficulties in maintaining concentration, persistence or pace. Thus, it is determined that the Claimant's objective medical evidence meets the requirements of Listing 12.03 A.1 and 4 and B.1, 2 and 3 or their medical equivalent, and is deemed disabled at Step 3 with no further analysis required. The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2). Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating psychiatrist that completed the psychiatric evaluations.

Lastly, in some circumstances benefit payments can, or must, be restricted to someone other than the individual (program group). BAM 420 A protective payee is a person/agency selected to be responsible for receiving and managing the cash assistance on behalf of the individual (program group) as a third party. *Id.* Restricted payments are required in any of the following circumstances:

- Court-ordered shelter arrearage collection
- Third-party resource disqualification
- Minor parent
- Substance Abuse
- Client convicted of a drug-related felony
- Money mismanagement
- A child(ren) receiving FIP has a legal guardian
- Eviction or threatened eviction

Id. Restricted payment status is reviewed when appropriate but at least at every determination. *Id.* The client has the right to request and be granted a review of the restricted payment status every six months. *Id.* An individual (group) may request a hearing to dispute a decision to begin or continue restricted payments or dispute the selection of a protected payee. *Id.* Restricted payments are continued until the hearing matter is resolved. *Id.*

In this case, in light of the Claimant's 6th grade education, exhibited inability during the consultative testing to do any of the math computations during the Mental Status Examination, as well as Claimant's testimony that she cannot do math and Claimant's prior [REDACTED] [REDACTED] [REDACTED] in remission, it is determined that a protective payee determination by the Department is necessary in accordance with BAM 420 (71/14).

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

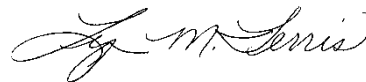
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

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 Claimant's MA-P and SDA application dated July 8, 2013, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits Claimant is otherwise entitled to receive in accordance with Department Policy.
3. The Department shall evaluate the assignment of a protective payee regarding the Claimant's SDA payments in accordance with Department policy found in BAM 420 as referenced above.
4. A review of this case shall be set for January 2016.



LYNN M. FERRIS

Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/23/2015**

Date Mailed: **1/23/2015**

LMF/tm

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]