

**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 18552
Issue No(s): 2009
Case No.: ██████████
Hearing Date: Mach 31, 2014
County: Wayne County DHS 18

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 March 31, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and ██████████ appeared as a witness. Participants on behalf of the Department of Human Services (Department) included ██████████ Medical Contact Worker.

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. The Claimant submitted an application for public assistance seeking MA-P benefits on October 15, 2013.
2. On December 8, 2013, the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on December 11, 2013.

4. On December 18, 2013, the Department received the Claimant's timely written request for hearing.
5. On February 19, 2014, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged mental disabling impairment(s) due to paranoid schizophrenia, ADHD, and post-traumatic stress disorder.
7. The Claimant alleges physical disabling impairments due to carpal tunnel syndrome and arthritis in her hands and wrists and degenerative osteoarthritis in her back with chronic back pain.
8. At the time of hearing, the Claimant was 51 years old with a [REDACTED] birth date; was 5'3" in height; and weighed approximately [REDACTED] pounds having recently lost 50 pounds due to medications she is taking.
9. The Claimant completed her education to the ninth grade, and with an employment history of working as a housekeeper in a hotel and manual labor working for the [REDACTED].
10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *ET seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

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).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a (e) (2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c) (2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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 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 mean 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, the Claimant alleges disability due to alleged mental impairments due to paranoid schizophrenia, ADHD, and post-traumatic stress disorder.

The Claimant alleges physical disabling impairments due to carpal tunnel syndrome and arthritis in her hands and wrists and degenerative osteoarthritis in her back with chronic back pain.

A summary of the medical evidence presented follows.

The Claimant's treating psychiatrist completed a Mental Residual Functional Capacity Assessment dated October 25, 2013. At that time, the Claimant was markedly limited in all categories. The Claimant has been seen by the psychiatrist since beginning treatment in late 2011 and was examined at that time. At the time of the completion of this psychological examination, the Claimant's GAF score was 40. The diagnosis was schizophrenia paranoid type, post-traumatic stress disorder.

The mental residual functional capacity assessment by her treating psychiatrist found the Claimant markedly limited in Understanding and Memory in her ability to remember locations and work-like procedures, and understand and remember detailed instructions. The Claimant was markedly limited in Sustained Concentration and Persistence in her ability to carry out detailed instructions, maintain attention and concentration for extended periods, ability to perform activities with a schedule maintain regular attendance and be punctual with in customary tolerances, ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without unreasonable number and length of rest periods. She was markedly limited in ability to work in coordination with or proximity to others without being distracted by them and to make simple work related decisions. As regards Social Interaction the Claimant was markedly limited in her ability to interact appropriately with the general public, accept instructions and respond appropriately and to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The Claimant was also markedly limited in socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. The Claimant was markedly limited in her ability to respond appropriately to change in work setting and travel in unfamiliar places and use public transportation and ability to set realistic goals and make plans independently.

The Claimant was also examined on September 17, 2013 for a psychiatric evaluation by a consultative examiner on behalf of the Social Security Administration. The exam was extremely thorough and reviewed both medical records and treatment records from the Guidance Center. At the time of the examination, the examiner commented that the general mood of the patient appeared to be one of mixed anxiety and depression, her affect is shallow in intensity and constricted in terms of lability. Rethinking however was concrete and her ability to retain newly acquired information impaired. Her general fund of information is poor when asked to name five large cities her responses were D [REDACTED] [REDACTED]. The examiner in summary and discussion found, "History, current clinical evaluation and review of medical reports substantiate the diagnosis of paranoid schizophrenia. This represents a rather severe mental disorder in which Ms. [REDACTED] experiences auditory hallucinations and paranoid delusions. Clinically Claimant demonstrates loosening of associations and blunted affect she is socially isolated as a result of her paranoia with marked difficulties in maintaining social functioning as well as difficulties in maintaining concentration, persistence, and pace. It was noted there was minimal to moderate limitations of her ability to function in a work environment until she became physically injured and began suffering chronic pain subsequent to that, there was a significant psychiatric decompensation into a psychotic state with active auditory hallucinations and paranoid delusions although she has received treatment both inpatient and outpatient psychiatric care, she has not re compensated to her previous level of functioning. As a result, she remained symptomatic and clearly incapable of functioning on a sustained basis at a level that

would allow her to be engaged in full-time gainful employment in any capacity for which she might be qualified. I am not convinced that she suffers from ADHD, but I do believe that she has a learning disorder which interferes with attention span, concentration, and retention of new information. In my opinion even with ongoing psychiatric treatment which will likely be required for an indefinite period, the prognosis for significant improvement is guarded to poor.

The Claimant is in treatment for ADHD and psychosis with schizophrenia. The Claimant was seen for a medication review on November 5, 2013. At that time, the Claimant's mood was stable with a reactive affect. The notes report that Claimant stated she was doing much better and was able to take care of herself and her daughter. At that time, the Claimant was evaluated as stable. A similar evaluation occurred on July 1, 2013, at which time the Claimant indicated she was happy, denied any medication side effects and would attend individual therapy weekly. The premedication review indicated a diagnosis of schizophrenia, residual type and posttraumatic stress disorder. Through much of the year 2013, the Claimant appeared to be improving based on a review of the treatment records and Medication Reviews conducted by her treating psychiatrist.

In November 2012, the Claimant was seen for a medication review at which time the Claimant's mood was sad with constricted affect. Speech was normal volume and tone but Claimant was disheartened regarding her rejection by Social Security disability.

A psychiatric progress note dated October 22, 2012, August 14, 2012, June 19, 2012, May 22, 2012 indicated that the Claimant's mood was stable, anxiety was mild, sleep and appetite were good and the Claimant had no delusional problems. The Claimant was hospitalized twice in 2011 due to a drug-related reaction and psychotic schizophrenic problems.

In March 2011, the Claimant was given a psychiatric evaluation. The Claimant had been hospitalized in January 2011 because she had a nervous breakdown with hallucinations and hearing audible voices. The Claimant reported ongoing depression and inability to pay attention to anything forgetful and performed poorly since elementary school. The report notes degenerative muscular disease in hands and back due to heavy construction work. During the examination the Claimant was noted as cooperative no psychomotor agitation or retardation and had good eye contact her mood was stable and affect was full. At the time the Claimant denied any current hallucinations or delusions and was oriented to person, place and time. Her attention was adequate concentration adequate, intellectual functioning was average judgment fine, insight was poor. At the time the diagnosis was paranoid schizophrenia, rule out schizoaffective disorder dependent type, ADHD inattentive type the GAF was 31 to 40 and prognosis was fair.

In a case management note in May of 2012, it was noted that Claimant only completed the ninth grade and was evaluated as having a learning disability. At the time the Claimant was able to care for herself and her home.

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 some medical evidence establishing that she does have some physical limitations on her 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 treatment/diagnoses of schizophrenia paranoid type. Accordingly, listing 12.03 was reviewed and considered. Listing 12.03 provides:

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;

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic 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 medical records presented show ongoing treatment and a condition onset since 2011 although has been ongoing for most of the Claimant's life, a fact also confirmed by Claimant's witness who has known the Claimant for many years. The Claimant has been medication compliant during the period. The last evaluation by a treating psychiatrist found after evaluation significant marked limitations in Understanding and Memory, Sustained Concentration and Persistence, Social Interaction and Adaption set forth in detail above. At the hearing, the Claimant credibly testified crying spells, persistent anxiety and lifelong depression and even with medications hears voices on average at least one time a day. The medical records and the mental residual capacity assessment document problems with sleeping, difficulty concentrating or thinking, difficulties maintaining concentration persistence and pace and lastly social functioning.

Thus, it is determined that the Claimant has demonstrated that Claimant's medical impairment meets or is the medical equivalent of listing 12.03.A 1 and B, 1-3.

As a result, the medical records and testimony demonstrate clearly that the Claimant has marked restrictions in daily living and social functioning and adaptation and concentration, persistence and pace and has a GAF score of 40. It is also noteworthy that the Consultative Examiner also confirmed that the Claimant remained symptomatic and clearly incapable of functioning on a sustained basis at a level that would allow her to be engaged in full-time gainful employment in any capacity for which she might be qualified. He concluded: "I am not convinced that she suffers from ADHD, but I do believe that she has a learning disorder which interferes with attention span, concentration and retention of new information". Deference was also accorded to the medical opinion of the Claimant's treating psychiatrist. The evaluations of the treating physician, and the medical conclusion 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 under 20 CFR§ 404.1527(d)(2).

Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent of, a listed impairment within 12.00, specifically 12.03. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

In this case, the Claimant is found disabled for purposes of the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant is disabled for purposes of the MA-P benefit program. Accordingly the Department's Decision is hereby REVERSED.

Accordingly, It is ORDERED:

1. The Department's shall begin processing the Claimant's October 15, 2013 application for Medical Assistance (MA-P) and determine the non financial eligibility factors.

2. The Department shall complete a review of this case shall be set for April 2015.



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

Date Signed: April 23, 2014

Date Mailed: April 23, 2014

NOTICE: 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)

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 was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/tm

cc:

[REDACTED]
[REDACTED]
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