

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-423638
Issue Nos.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: April 24, 2014
DHS County: Wayne County (76)

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 24, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED], also appeared as Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program and State disability Assistance (SDA) benefit program?

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 28, 2013, the Claimant submitted an application for public assistance seeking MA-P and SDA.
2. On December 26, 2013, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on January 10, 2014.

4. On March 18, 2014, the Department received the Claimant's written request for hearing.
5. On March 18, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued April 28, 2014. The new evidence was submitted to the State Hearing Review Team on June 17, 2014.
7. On July 1, 2014, the State Hearing Review Team found the Claimant not disabled.
8. The Claimant alleges physical disabling impairments due to chronic back pain.
9. The Claimant has alleged mental disabling impairments due to major depressive disorder, anxiety, and post-traumatic stress disorder.
10. At the time of hearing, the Claimant was 51 years old with a [REDACTED] birth date. Claimant is 5'3" in height; and weighed 205 pounds.
11. The Claimant has past employment caring for hospital research animals. The Claimant also worked performing computer data entry of medical records. The Claimant also did janitorial work.
12. 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 1396-1396w-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.

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 working part-time and does not appear to be 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 mean 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 has alleged mental disabling impairments due to major depressive disorder, anxiety and post-traumatic stress disorder.

The Claimant has alleged physical disabling impairments due to back pain.

A summary of the Claimant's Medical evidence follows.

A psychiatric evaluation was performed on April 24, 2014. The diagnosis was major depressive disorder, recurrent severe with psychotic features. Post-traumatic stress disorder. The GAF score was 36 and had not improved from the GAF score of 36 from the prior year. The examination was signed by the Claimant's treating psychiatrist. The Claimant's GAF score had previously been reported throughout the psychiatric records of the mental health provider as a GAF of 50 and thus the GAF score of 36 is presumed to be in error.

A Mental Residual Functional Capacity Assessment was completed on May 9, 2014 by the Claimant's treating psychiatrist. The Claimant was evaluated as markedly limited in her ability to understand and remember detailed instructions. The Claimant was markedly limited in sustained concentration and persistence with regard to her ability to carry out detailed instructions and maintain attention and concentration for extended periods. The Claimant was markedly limited in her ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. The Claimant was markedly limited in her ability to sustain an ordinary routine without supervision. The Claimant was markedly limited in her ability to make simple work related decisions and the 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. As regards social interaction,

the Claimant was markedly limited in her ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes. With regard to adaptation, the Claimant was markedly limited in her ability to respond appropriately to changes in the work setting and the ability to set realistic goals or make plans independently of others.

The Claimant has been in psychiatric treatment for three years prior to this examination.

The Claimant's treating physician completed a Medical Needs Form on May 21, 2014. The diagnosis indicated disc protrusion, pain management, cervical degenerative disc disease at C6 with foraminal stenosis at L5 and L5 – S1. The Claimant is seen by her doctor on a monthly basis and the diagnosis was expected to last at least 12 months or more with a notation that they were anticipated to last her entire lifetime. The doctor noted that she was unable to drive on her own and needed help with all daily personal-care activities and activities of daily living including meal preparation, shopping, laundry and housework.

Since the hearing on April 24, 2014, the Claimant has been approved for Home Help Services by the Department of Community Health to assist her with her activities of daily living. The Claimant was also provided a wheel chair due to ambulation difficulties.

A medical examination report was completed by the Claimant's treating doctor on May 28, 2014. This doctor has seen the Claimant for approximately one year. The diagnosis at the time of the evaluation was cervical degenerative disc disease at C6, stenosis at L4 – L5 with disc protrusion at L5 S1, and noted depression and anxiety.

On physical examination, the doctor noted that the Claimant was obese and needed a cane to ambulate. The cane was necessary as a noted gait abnormality was present, and with regard to her cervical and lumbar spine, the range of motion was 30% of normal.

Her bilateral lower extremities' demonstrated weakness to resistance. The clinical impression was that the Claimant's condition was stable and her limitations were expected to last more than 90 days. The limitations that were imposed included occasionally lifting less than 10 pounds with respect to lifting and carrying. The Claimant could stand or walk less than two hours in an eight-hour workday. The Claimant could not reach or push/pull with either of her hand/arms. An assistive device, a cane was deemed necessary. The Claimant could not operate foot/leg controls with either foot or leg. The doctor noted the limitations were noted based on both objective and subjective findings. The doctor further noted that the Claimant could not meet her needs in the home. The functional information completed by the physician with supportive medical findings noted the following: bending, lifting, twisting, prolonged standing, prolonged

walking, stretching, pushing/ pulling, changing linens, making beds, washing floors, sinks, dishes, bathtubs, toilets moving furniture, picking up objects from floor, carrying garbage, mowing grass, driving the car and shoveling snow, needs help shopping, food prep, bathing, dressing and undressing, taking medications and transportation assistance to attend activities including doctor's appointments.

A medical examination report completed in December 2013 noted the same limitations and also included in the inability to sit less than six hours in an eight-hour workday. The Claimant was again evaluated as being incapable of meeting her personal care needs and activities of daily living.

On November 26, 2013, an x-ray of the cervical spine noted chronic reversal of cervical lordosis was straightening, mild to moderate, mid to lower C-spine degenerative disc disease, and diffuse posterior degenerative joint disease, with resultant mid-right C6 anterior forminal stenosis. An x-ray of the shoulder was also performed and noted that joint spaces and bones and surrounding soft tissues were normal with no fracture dislocation or inter-osseous lesion.

A radiological report was produced on November 27, 2013. It noted there was diffuse mild congenital bony spinal canal stenosis in the lower lumbar spine. L4 – 5 shows small central disc protrusion, spinal canal is mildly stenosed. Both sided neuralforamin were viewed and are not significantly stenosed. L5 -S1 shows small left forminal disc protrusion. Spinal canal is not stenosed, left sided neuralformamin is mildly stenosed. Lumbar vertebral bodies are unremarkable without compression fracture. There are noted diffuse degenerative facet joint changes. There is diffuse congenital bony spinal canal stenosis in the lower lumbar spine. L4 –5 shows small central disc protrusion spinal canal is my mildly stenosed.

A psychiatric evaluation performed on August 23, 2013, noted a diagnosis of major depressive disorder, recurrent severe with psychosis. Post-traumatic stress disorder with the GAF score of 36. The examination notes past substance abuse with last use in 2005. During this examination, patient affect was noted as constricted, and her mood was anxious, sad and depressed. The thought process noted paranoid ideation and non- commanding hallucinations were noted. Claimant's insight was noted as poor and her judgment was fair.

The Claimant was evaluated for physical therapy and pain treatment. The evaluation date was May 31, 2013. At the time, the current impairments noted were lower back pain that has progressively worsened with activities such as prolonged sitting, or standing and housework. Patient also has shoulder pain which is worse at night and with activity; radicular symptoms were noted down the left lower extremity. The evaluator indicated the current functional score was 13 out of 100. The pain levels were

noted as intermittent and on a scale of 1 to 10, a 10. A fall risk evaluation noted the likely hood of falling was high.

A Consultative Examination was performed on August 13, 2013. At the time, the examiner noted the complaints to be depression, muscle spasm, anxiety, tendinitis bronchitis and stress. The physical examination noted a height of 5 '4" and a weight of 184 pounds. Tenderness to palpation was noted in the right lower extremity, as well as right back with no obvious spinal deformity, swelling or muscle spasm, tenderness, clubbing, edema, varicose veins or chronic leg ulcers. The Claimant was able to get on and off the exam table slowly. A slight limp was noted on her right side. Tandem heel toe walk was done slowly. The impression was depression and anxiety with history, and is being followed by a mental health specialist and taking medication on a regular basis. Muscle spasms: the examinee has a history of muscle spasms primarily in her back along with tendonitis. "She states she has had back, shoulder, arm, hand, and left knee pain. She did have an MRI done in the past and has been to pain management. She continues to have chronic pain and uses a cane for balance and support. Based upon the history and exam, the examinee has chronic back pain for which she will need long-term ongoing care. She may have difficulty with prolonged standing, stooping, squatting, lifting and bending. She uses a cane for balance and support, with a slight limp on the right side. She needs ongoing mental health care as well".

On July 15, 2011, an x-ray of the Claimant's lumbosacral spine notes 50% disc space narrowing, involving the L5 S1 level with well-maintained vertebral body heights.

At the time of the hearing, the Claimant had been in treatment for her mental impairments and psychiatric problems for 3 years, with the current provider and treatment before then. At this time, she is seen one time a month by her psychiatrist and twice monthly by her therapist, and is limited to treatment options due to lack of insurance. The Claimant credibly testified that her mental impairments had been with her throughout her adult life. She has difficulty around crowds, has ongoing non-command hallucinations (voices), her memory is impaired and she needs help with taking her medications. She is isolative and has no friends, and experiences daily anxiety and multiple crying spells daily. The Claimant has gained over 60 pounds recently. The Claimant answered questions asked by the undersigned at the hearing with a very flat affect.

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 and mental 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.

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. Listing 12.04 Affective Disorders was reviewed. The Listing requires that the following requirements be met.

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

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;

Based upon the medical evidence provided by the Claimant's treating psychiatrist outlined above, which has consistently found the Claimant to be markedly impaired in each of the four categories found in 12.04 B and 12.04 A, a,b,e,g,and i due to her mental impairments, it is determined that the Claimant has met the requirements of Listing 12.04 A and B. 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 physician. Based upon this determination, it is found that the Claimant is disabled at Step 3 with no further analysis required.

Therefore, it is determined, based upon the objective medical evidence and a review of the entire record, that the Claimant is found disabled, at Step 3 as Listing 12.04 Affective Disorders is met and thus no further analysis required.

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 not disabled for purposes of the MA-P benefit program.

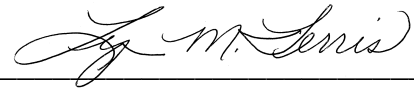
Accordingly, it is ORDERED:

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:

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1. The Department is ORDERED to initiate a review of the application dated October 28, 2013 for MA-P and SDA, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement to the Claimant for SDA benefits which the Claimant was otherwise entitled to receive in accordance with Department Policy.
3. A review of this case shall be set for July 2015.



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

Date Signed: July 29, 2014

Date Mailed: July 29, 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.

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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

LMF/tm

cc:

