

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201425346
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: May 7, 2014
County: Kent

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 May 7, 2014, from Lansing, Michigan. Participants on behalf of Claimant included herself. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator [REDACTED] and ES [REDACTED]

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's September 27, 2013 application for Medical Assistance (MA) based on disability and retroactive Medical Assistance (MA) based on disability?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was born on [REDACTED] Claimant is 5' 9" tall and weighs approximately 250 pounds. Claimant's formal education consists of 12 years of school.
2. Claimant reports relevant work history in manufacturing. Claimant reports last working in 2012.
3. Claimant asserts disability based on arthritis in her knees and mental illness.

4. On September 27, 2013, Claimant applied for Medical Assistance (MA) based on disability and retroactive Medical Assistance (MA) based on disability.
5. On January 17, 2014, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.
6. On January 27, 2014, Claimant submitted a request for hearing.
7. On April 15, 2014, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.
8. On April 18, 2014, the State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.
9. At his hearing Claimant requested an opportunity to submit additional evidence not available at this hearing and waived any violation of statutory or policy time standards.
10. On August 1, 2014, the State Hearing Review Team again determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) based on disability.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Claimant's testimony, Claimant has not received earnings as an employee since the date of application. Therefore, Claimant is not engaged in substantial gainful activity. Claimant is not found ineligible and the analysis proceeds to step two.

STEP 2

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;

Capacities for seeing, hearing, and speaking;

Understanding, carrying out, and remembering simple instructions;

Use of judgment;

Responding appropriately to supervision, co-workers and usual work situations;
and

Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet durational requirements of 12 months for Medical Assistance (MA) based on disability. If we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based on arthritis in her knees and mental illness. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is a Mental Residual Functional Capacity Assessment (DHS-49E) completed on May 13, 2014 by Dr. Mesaros from an April 22, 2014 evaluation. (pages 13-15) The Doctor found Claimant was: moderately limited in 2 of 3 understanding an memory categories; markedly limited in 5 of the 8 sustained concentration and persistence categories and moderately limited in the other 3; markedly limited in 1 of the 5 social interaction categories and moderately limited in the other 4; and markedly limited in 2 of the 4 adaptation categories and moderately limited in the other 2.

There is an August 5, 2013 office visit report from Dr. Steen of Mercy Health Physician Partners. (Pages 189-192) Claimant complained of depression and musculoskeletal pain. Claimant was found to be positive for: fatigue; nocturnal pain; depressed mood; difficulty concentrating; difficulty initiating sleep; feelings of guilt; marked diminished interest or pleasure; suicidal ideation; decreased mobility; joint locking; joint tenderness; popping. Claimant was considered to have severe depression.

There is a June 3, 2013, office visit report from Dr. Steen of Mercy Health Physician Partners. (Pages 193-197) Claimant complained of depression. Claimant was found to be positive for: depressed mood; difficulty concentrating; difficulty initiating sleep; dizziness; feelings of guilt; marked diminished interest or pleasure. Claimant was considered to have moderately severe depression. Claimant's assessment plan was to add in wellbutrin to increase motivation and clarity.

There is a May 1, 2013, office visit report from Dr. Steen of Mercy Health Physician Partners. (Pages 198-201) Claimant complained of depression and musculoskeletal pain. Claimant was found to be positive for: nocturnal pain; anxiety; depressed mood; depression; difficulty concentrating; difficulty initiating sleep; dizziness; feelings of guilt; insomnia; marked diminished interest or pleasure; decreased mobility; joint locking; and limping. Claimant was considered to have moderately severe depression. Claimant's assessment plan was to restart celexia for her mood disorder, get neuropsychiatric testing for her memory difficulty and referral to an orthopedic surgeon for her knee pain.

20 CFR 416.927

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

The objective medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Claimant is not disqualified from receipt of Medical Assistance (MA) based on disability and the analysis continues.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant's mental disorder was compared with the Social Security Administration impairment listing 12.04 Affective Disorders. That listing is:

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 distractability; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking;

or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration;

The medical evidence of record shows that Claimant's recurrent major depressive disorder has been documented since 2012. It also shows that her disorder is characterized by: fatigue; depressed mood; difficulty concentrating; difficulty initiating sleep; feelings of guilt; marked diminished interest or pleasure; and suicidal ideation. The requirements of section A are satisfied.

The Mental Residual Functional Capacity Assessment (DHS-49E) completed by Dr. Mesaros shows that Claimant was markedly limited in 5 of the 8 sustained

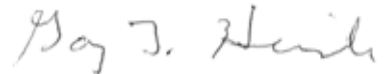
concentration and persistence categories and markedly limited in 1 of the 5 social interaction categories. The requirements of section B are satisfied.

Claimant is determined disabled at this step based on her mental illness. The medical evidence of record about Claimant's musculoskeletal condition shows she has severe physical impairments to work which are part of her overall impairments. However, specific analysis of those physical impairments is not required to determine that she is disabled in this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly determine that Claimant is not disabled and deny Claimant's September 27, 2013 application for Medical Assistance (MA) based on disability and retroactive Medical Assistance (MA) based on disability.

This Departmental action is **REVERSED**.



Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: November 14, 2014

Date Mailed: November 14, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;

- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

cc:

