

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

IN THE MATTER OF:



Reg. No.: 20143110
Issue No.: 3009; 4009
Case No.: [REDACTED]
Hearing Date: February 12, 2014
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 February 12, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED], Claimant's authorized hearing representative (AHR) and benefits coordinator at the facility where Claimant resides. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payment Worker.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On July 25, 2013, Claimant submitted an application for public assistance seeking (i) SDA and (ii) MA-P benefits retroactive to April 2013.
2. On September 12, 2013, the Medical Review Team (MRT) found Claimant not disabled. (Exhibit 1, pp. 2-3)

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3. On September 13, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability. (Exhibit 1, pp. 35-37)
4. On October 7, 2013, the Department received Claimant's timely written request for hearing.
5. On December 5, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled. (Exhibit 3)
6. Claimant alleged mental disabling impairments due to anxiety disorder, paranoid schizophrenia, Asperger's, and obsessive-compulsive disorder.
7. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED] birth date; she was [REDACTED] in height and weighed [REDACTED] pounds.
8. Claimant is a high school graduate with some college and an employment history of work as a fast-food restaurant worker, garden center manual laborer, clerk at convenience stores, and college dorm resident advisor.
9. 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 (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 the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services 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

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less than 12 months. 20 CFR 416.905(a). 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. BEM 261 (July 2013), p. 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 (1) whether the individual is engaged in substantial gainful activity (SGA); (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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)

In general, the individual has the responsibility to establish a disability 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 416.912(a); 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(d).

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 applicants 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).

Step One

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As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is substantial gainful activity (SGA), then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under step 1 and the analysis continues to step 2.

Step Two

Under step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement states that the impairment is expected to result in death or have lasted or must be expected to last for a continuous period of at least 12 months. 20 CFR 416.922. 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). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. CFR 416.921(b).

In addition to the above, a special technique is used to evaluate mental impairments. 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

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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 are 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 mental 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).

At the second step, the individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *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).

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant alleges disability due to anxiety disorder, paranoid schizophrenia, Asperger's, and obsessive-compulsive disorder.

Claimant was hospitalized in 2004 after her friend died. Another hospitalization occurred in December 2011 during which time she was diagnosed with obsessive compulsive disorder. Claimant was again hospitalized from October 17, 2012 to December 4, 2012 following a suicide ideation although there is also reference in the medical file that she may have been involuntarily admitted because she was throwing knives at her parents. Following her hospital release and a short stay with her parents, Claimant voluntarily admitted herself on February 22, 2013 to a residential treatment program. In a psychiatric evaluation completed on February 22, 2013, Claimant's treating physician identified her diagnosis as schizophrenia-paranoid type; major depressive disorder; anxiety disorder; and obsessive-compulsive personality disorder.

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The psychiatric evaluation noted that Claimant's predominate affect display was anxiety with an intensity of 3 on a scale of 1 to 5, with 5 as the most, and that the content of her thought process was delusional. She also noted that her affect was stiff and constrained and a bit odd. The psychiatrist listed Claimant's GAF score as 22 and her prognosis as fair.

In a Psychiatric/Psychological Examination Report, DHS-49-D, signed on July 10, 2013, based on a July 10, 2013 evaluation, Claimant's psychiatrist noted that Claimant's current GAF score was 40. The psychiatrist also completed a Mental Residual Functional Capacity Assessment on July 10, 2013, and identified Claimant's functional skills all as either moderately limited or markedly limited. More specifically, Claimant's skills were identified as markedly limited for (i) the ability to remember locations and work-like procedures, (ii) the ability to understand and remember detailed instructions (iii) the ability to carry out detailed instructions, (iv) the ability to maintain attention and concentration for extended periods, (v) the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, (vi) the ability to sustain an ordinary routine without supervision, (vii) the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods, (viii) the ability to interact appropriately with the general public, (ix) the ability to accept instructions and respond appropriately to criticism from supervisors, (x) the ability to respond appropriately to change in the work setting, (xi) the ability to travel in unfamiliar places or use public transportation, and (xii) the ability to set realistic goals or make plans independently of others. For the remaining skills considered, the psychiatrist identified Claimant as moderately limited: (i) the ability to understand and remember one or two-step instructions, (ii) the ability to carry out simple, one or two-step instructions, (iii) the ability to work in coordination with or proximity to others without being distracted by them, (iv) the ability to make simple work-related decisions, (v) the ability to ask simple questions or request assistance, (vi) the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes, (vii) the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, and (viii) the ability to be aware of normal hazards and take appropriate precautions.

As summarized above, Claimant has presented medical evidence establishing that she does have mental limitations on her ability to perform basic work activities. The degree of functional limitation on Claimant's activities, social function, concentration, persistence, or pace is marked. As of the hearing date, Claimant's mental impairments have lasted not less than 12 months.

Therefore, in consideration of the de minimis standard necessary to establish a severe impairment, Claimant has satisfied the requirements under step 2 and the analysis will proceed to step 3.

Step Three

The third step of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii).

The evidence shows diagnosis of, and treatment for, anxiety disorder, paranoid schizophrenia, Asperger's, and obsessive-compulsive disorder. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D.

Based on the objective medical evidence presented of these diagnosed mental disorders, Listing 12.03 (schizophrenic, paranoid and other psychotic disorders), Listing 12.06 (anxiety-related disorders), Listing 12.08 (personality disorders), and Listing 12.10 (autistic disorder and other pervasive developmental disorders) were considered.

Particularly relevant in Claimant's case is Listing 12.06 for anxiety-related disorders, which are defined as disorders where anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms. To meet the level of severity necessary to meet a listing under 12.06, an individual must satisfy the requirements under both A and B or both A and C:

- A. Medically documented findings of at least one of the following:
 - 1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
 - 2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
 - 3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
 - 4. Recurrent obsessions or compulsions which are a source of marked distress; or
 - 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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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. Resulting in complete inability to function independently outside the area of one's home.

Claimant's medical records show that she was hospitalized in December 2011 for anxiety-related issues, and, based on Claimant's testimony, she was diagnosed with obsessive-compulsive disorder at that time. Claimant was also diagnosed with paranoid schizophrenia and anxiety disorder during her October 2012 to December 2012 hospitalization. An Asperger's diagnosis followed in February 2013 when she was in the treatment facility. In July 2013, Claimant's treating psychiatrist identified Claimant's understanding and memory and sustained concentration and persistence as markedly limited in all categories other than actions requiring simple one- or two-step actions or decisions, in which cases she was nonetheless deemed moderately limited. Her ability to adapt is also identified as markedly limited. Claimant's GAF score in July 2013 was only 40.

Claimant is currently residing in a treatment facility. Claimant testified that, with therapy and medication, her condition has improved. However, while she has advanced beyond the residential treatment portion of the program that involved being monitored 24 hours daily, she continues to reside in a highly-structured environment where she has immediate access to counseling, nursing, and psychiatric care. Although Claimant testified that she believed she could shop by herself, she only went shopping with someone from the treatment facility. Claimant's case manager testified that Claimant was taking a single college class which met twice a week and was unsupervised during her time at class but noted that she devoted five hours daily to going to class, meeting with tutors and doing her homework. She also noted that Claimant's social relationships continued to be very limited and that her behaviors were very routine and methodical.

The medical evidence establishes that Claimant's mental impairments meet, or are the medically equivalent to, the severity of Listing 12.06 in Appendix 1 of the Guidelines to be considered as disabled. Accordingly, Claimant **is** disabled at step 3 and no further analysis is required.

Because Claimant is found disabled for purposes of the MA-P program, she is, therefore, disabled for purposes of SDA benefit program.

DECISION AND ORDER

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

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY:

1. Process Claimant's July 25, 2013, MA, with retroactive coverage to April 2013, and SDA application to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified; and
3. Review Claimant's continued eligibility in March 2015.


Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 6, 2014

Date Mailed: March 6, 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;

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- 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

ACE/tlf

cc:

