

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-8725
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 19, 2014
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on March 19, 2014, from Taylor, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's spouse, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

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 [REDACTED], Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 204.00.
7. As of the date of the administrative hearing, Claimant was a 42-year-old female with a height of 5'8" and weight of 259 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had no medical coverage
11. Claimant alleged disability based on impairments and issues including asthma and bipolar disorder.

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Claimant contended that she intended to dispute a termination of MA benefits, not a denial. DHS presented a Notice of Case Action (Exhibits 276-280) which verified that DHS mailed Claimant a notice of Medicaid termination on [REDACTED].

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (7/2013), p. 5. The request must be received anywhere in DHS within the 90 days. *Id.*

Claimant requested a hearing on [REDACTED]. Claimant's hearing request submission was beyond the 90-day timeframe to request a hearing concerning Medicaid termination. Accordingly, Claimant's hearing request will be dismissed concerning the dispute of Medicaid termination. Claimant's hearing request was timely to dispute an application denial of MA benefits. The analysis will proceed to address Claimant's eligibility for MA benefits based on disability concerning an application dated [REDACTED].

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).
BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden 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 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. 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/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has

been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant testified that she has a long history of psychological problems. Claimant testified that she has bipolar disorder and a history of multiple suicide attempts. Claimant testified that she experienced homicidal ideation in 2006 in response to work stress and feelings of being picked on while working. Claimant testified that she takes approximately 10 medications but that she is still unable to deal with stressful situations.

Various psychological treatment records (Exhibits 85-94; 110-198; 211-215; 226-269) from 2003-2011 were presented. The records verified Claimant received ongoing psychological treatment for several years including psychiatric hospitalizations from 2003, 2004 and 2008.

A Comprehensive Biopsychosocial Assessment (Exhibits 62-72) dated [REDACTED] was presented. The form was signed by a psychiatrist and social worker, presumably based on a first encounter with Claimant. It was noted that Claimant presented with complaints of high anxiety, ongoing for 10 years. Reported Claimant symptoms included the following: inability to breathe, sad feelings, racing heartbeat, overeating, sleeping difficulties, and focus difficulties. Three prior psychiatric hospitalizations (in 2003, 2004, and 2006) were noted. Two of Claimant's prior hospitalizations were attributed to oversensitivity to criticism during a period of employment. A third hospitalization was noted to occur during a period of financial stress. Axis I diagnoses of major depressive disorder and panic disorder were noted. Claimant's GAF was noted to be 51.

A Psychiatric Evaluation (Exhibits 78-80) dated [REDACTED] was presented. The evaluation was completed by a psychiatrist with an unspecified history treating Claimant. It was noted that Claimant's GAF was 49.

A Mental Residual Functional Capacity Assessment (Exhibits 34-35) dated [REDACTED] was presented. The form was completed by a psychiatrist and social worker with an unstated history of treating Claimant. Claimant was found markedly restrict in all listed 20 work-related abilities. It was noted that Claimant could not cope with daily stressors.

A Psychiatric Evaluation (Exhibits 73-75) dated [REDACTED] was presented. The evaluation was completed by a psychiatrist with no history of treating Claimant. It was noted that Claimant presented to a clinic seeking psychological treatment. Claimant's GAF was noted to be 31-40.

Treating physician documents (Exhibits 48-41) were presented. It was noted that Claimant presented with complaints of migraine headaches in 6/2011 and 11/2011. In 11/2011, it was noted that Claimant was treated with medication and that she felt slightly better. It was noted that Claimant should return if a headache persists.

A Medical Examination Report (Exhibits 29-30) dated [REDACTED] was presented. The report was completed by an internal medicine physician with no prior history of treating Claimant. The physician provided diagnoses of hypertension, diabetes mellitus, and bipolar disorder. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

A Psychiatric/Psychological Examination Report (Exhibits 31-33) dated [REDACTED] was presented. The report was completed by a treating psychiatrist who noted an approximate 6-year history of treating Claimant. A history of suicidal ideation was noted. Claimant's GAF was noted to be 60.

A Mental Residual Functional Capacity Assessment (Exhibits 34-35) dated [REDACTED] was completed by Claimant's treating psychiatrist. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. Claimant's psychiatrist noted that Claimant tried and failed in several work situations. Numerous marked and moderate restrictions were noted.

A Psychiatric/Psychological Examination Report (Exhibits 9-11) dated [REDACTED] was presented. The report was completed by a psychiatrist who noted an approximate 7-year history of treating Claimant. Claimant's psychiatrist noted that Claimant was easily upset and had low self-confidence. An Axis I diagnosis of bipolar disorder was noted. Claimant's GAF was noted to be 60.

A Mental Residual Functional Capacity Assessment (Exhibits 12-13) dated [REDACTED] was completed by Claimant's treating psychiatrist. Claimant's psychiatrist noted that Claimant was markedly limited in the ability of performing activities within a schedule including maintaining customary attendance and punctuality standards. Claimant was also found markedly limited in working in coordination with or proximity to others. Claimant's psychiatrist found Claimant to be moderately limited in 16/18 of other listed work abilities.

Presented documents established that Claimant has a lengthy history of psychological treatment including multiple hospitalizations. The evidence also established that despite treatment, Claimant's anxiety and fears persist. Restrictions in areas of concentration,

social interactions, and adaptability were consistently noted. It is found that Claimant established significant impairment to performing basic work activities for a period of longer than 12 months.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant'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). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

The presented evidence established diagnoses for bipolar disorder and depression. Both disorders are affective disorders covered by Listing 12.04 which reads as follows:

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

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

OR

C. Medically documented history of a chronic affective 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.

Claimant presented a lengthy history of psychological difficulties. Claimant credibly testified that she has a history of five suicide attempts, twice as a teen and three times as an adult. A history of multiple suicide attempts is consistent with finding that Claimant has psychological problems preventing her from maintaining employment.

Claimant testified that she experienced homicidal ideation in 2006 when she considered killing her former boss. Hospital documents also noted in 2008 that Claimant reported thoughts of killing a Social Security Administration judge who determined that she was not disabled (see Exhibit 239). Claimant's homicidal tendencies are consistent with finding that Claimant has psychological problems preventing her from maintaining employment.

Evidence of disability also came from a treating psychiatrist who noted that Claimant has marked concentration restrictions, most notable in the ability to complete a normal workday without psychological interruption. The psychiatrist statement was made in 2/2012. Completing a workday without psychological interruption is persuasive evidence supporting disability.

Presented evidence also tended to verify that Claimant's condition improved. On [REDACTED], a person from Claimant's treating mental health agency noted Claimant was only moderately limited in completing a workday without psychological interruption. Two marked restrictions were noted, working in coordination with others and maintaining regular attendance and punctuality. These marked restrictions are employment obstacles, but 2 out of 20 marked restrictions is an improvement from 2012 where Claimant was markedly restricted in at least four abilities. By comparison, in 12/2008, Claimant was deemed markedly limited in 19/20 work-related abilities.

Not coincidentally, Claimant was eligible for Medicaid benefits for several months before 8/2013. Thus, it is presumed that Claimant's access to therapy and medication improved Claimant's mental health.

Given Claimant's improvement, it must be considered whether Claimant's lack of work in recent years is attributable to mental health obstacles or malingering. In 8/2013, Claimant's GAF was 60. A GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Claimant's GAF would place her at the higher functioning level of persons with moderate limitations. A GAF of 60 is representative of a person with psychological obstacles, but not to the point of disability. Claimant's GAF is evidence that Claimant is not disabled.

There is evidence suggesting that Claimant is capable of obtaining and maintaining employment. The evidence also suggested that Claimant requires access to medication and counseling to maintain employment. As of the date of hearing, Claimant did not have such access. Significant weight was given to Claimant's lengthy psychological treatment history in determining disability. Based on the presented evidence, it is found that Claimant's depression is such that the mental demand of employment would likely cause decompensation. Accordingly, Claimant meets the listing for affective disorders and is found to be a disabled individual.

DECISION AND ORDER


The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant untimely requested a hearing to dispute an MA benefit termination. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and

(4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/10/2014

Date Mailed: 4/10/2014

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

CG/hw

cc:

