

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

IN THE MATTER OF:

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Reg. No.: 15-010999
Issue No.: 4009
Case No.: ██████████
Hearing Date: August 6, 2015
County: Oakland (2)

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 August 5, 2015, from Madison Heights, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████ specialist.

ISSUE

The issue is whether MDHHS properly denied Claimant's State Disability Assistance (SDA) eligibility 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 May 8, 2015, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On June 9, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-10).
4. On June 11, 2015, MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On June 15, 2015, Claimant requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Claimant was a 46 year old female.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant alleged disability based on various mental health restrictions.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1. A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Claimant is a disabled individual. *Id.*, p. 3.

Generally, state agencies such as MDHHS 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. As noted above, SDA eligibility is based on a 90 day period of disability.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 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 SGA. *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 2015 monthly income limit considered SGA for non-blind individuals is \$1,090.

Claimant credibly denied performing any employment since the date of the SDA 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 application. Accordingly, the disability analysis may proceed to Step 2.

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 12 month durational period is applicable to MA benefits; as noted above, SDA eligibility requires only a disability duration of 90 days.

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 a summary of presented medical documentation.

A Case Management Assessment (Exhibits 43-48) dated August 25, 2014, was presented. The assessment was noted as completed by two social workers. It was noted that Claimant reported emotional instability affected her ability to work. Reported Claimant symptoms included the following: social isolation, helplessness, hopelessness, anhedonia, anxiety, decreased attention, worsening hygiene, irritability, low frustration level, quick-tempered, insomnia, and poor motivation.

A Psychiatric Evaluation (Exhibits 34-40) dated December 1, 2014, was presented. The form was completed by a treating psychiatrist. It was noted that Claimant reported ongoing depression symptoms since childhood, though Claimant never pursued treatment until a few years ago. It was noted that Claimant "no longer works because of what was her daily >6 pk of beer"; Claimant was noted to be currently abstinent from alcohol.. A dysphoric mood and constricted affect was noted. An Axis I diagnosis of bipolar disorder I was noted. Claimant's GAF was noted to be 50.

Mental health treatment notes dated December 2, 2014, (Exhibits 32-33) from a social worker were presented. It was noted that Claimant reported not sleeping well and relationship difficulties.

Mental health treatment notes dated February 27, 2015, (Exhibits 32-33) from a social worker were presented. It was noted that Claimant discussed unspecified triggers.

Mental health treatment notes dated March 23, 2015, (Exhibits 30-31) from a social worker were presented. It was noted that Claimant's boyfriend ended their relationship. It was noted that Claimant reported depression of 9/10 and anxiety of 10/10.

Mental health treatment notes dated March 26, 2015, (Exhibits 28-29) from a social worker were presented. It was noted that Claimant presented as tearful. It was noted that Claimant reported that therapy is helpful.

Mental health treatment notes dated April 10, 2015, (Exhibits 26-27) from a social worker were presented. It was noted that Claimant presented with a labile mood and congruent affect as Claimant was laughing and crying when making statements. It was noted that Claimant reported a 10/10 depression. It was noted that Claimant reported feeling overwhelmed due to financial stressors and a recent end of a relationship.

A Psychiatric/Psychological Examination Report (Exhibits 21-23) from an examination dated April 10, 2015, was presented. The form was completed by a treating psychiatrist with an approximate 9 month history of treating Claimant. General observations of Claimant included the following: depressed, moderate psychomotor retardation, poor eye contact, orientation x3, intact memory, intact concentration, fair insight, and poor judgment. Reported symptoms included the following: sadness, apathy, poor self-esteem, hopelessness, helplessness, and recurrent suicidal ideation. Claimant's active medications included Lithium, Ativan, and Doxepin. An Axis I diagnosis of bipolar disorder I was noted. Claimant's GAF was 45.

Claimant testified that she has a ruptured disc in her lower back, though she also testified that the problem would not prevent her from performing sedentary employment. Claimant did not present any treatment for any exertional problems. It is found that Claimant failed to establish any exertional-related severe impairments.

Claimant testified that she worked as a medical biller until January 2014. Claimant testified that her job involved numerous deadlines and potentially argumentative interactions with patients. Claimant testified that she quit her job because it was too stressful. Claimant testified if she did not quit, she would have been fired. Claimant testified that she felt very anxious about her work and that she was absent many days from work.

Claimant testified that she has tried coping skills such as being positive and trying to distract herself from depression. Claimant could not identify any other coping skills that she has tried. Claimant testimony suggested that medications are helpful, though she is on her 4th anti-depressant in the last 6 months.

Claimant testified that when she worked, she was more manic depressive. Claimant testified that when she had some money, she would usually feel great and then spend her money very quickly.

Claimant testified that she has good days and bad days. Claimant estimated she has approximately 15 “severely bad days” out of 30. Claimant testified that on her severely bad days, she watches television all day and does not eat or get out of bed. Claimant testified that she worries about everything (e.g. her appearance, her diet, her words...).

Presented testimony and documentation sufficiently verified that Claimant has numerous depression symptoms which affect Claimant’s daily life. Presented evidence sufficiently implied that Claimant’s symptoms are likely to last 90 days or longer. It is found that Claimant established having a severe impairment and the disability analysis may proceed to Step 3.

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.

Claimant’s most documented impairment involved depression related to bipolar disorder. Depression and bipolar disorder 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 was diagnosed with bipolar disorder I. Bipolar disorder I is understood to be cause manic-depressive symptoms. A diagnosis of bipolar disorder I is not definitive evidence of restrictions meeting SSA listing requirements, however, it is more consistent with meeting listing requirements than a diagnosis of bipolar disorder II.

Claimant testified that she has recurring symptoms of anhedonia, sleep disturbance, decreased energy, suicidal ideation, and feelings of worthlessness. Claimant's testimony was consistent with presented records. It is found that Claimant meets Part A of the affective disorder listing.

Claimant's GAF as of December 2014 was 50. As of April 20, 2015, Claimant's GAF fell to 45. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Claimant's GAF history is indicative of marked impairments in ADLs.

A Mental Residual Functional Capacity Assessment (Exhibits 24-25) dated May 8, 2015 was presented. The assessment was noted completed by Claimant's psychiatrist. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Claimant was found moderately limited in 10/20 abilities. It was noted that Claimant was markedly restricted in the following abilities:

- Remembering locations and other work-like procedures
- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Working in coordination or proximity to other without being distracting
- Completing a normal workday without psychological symptom interruption
- Getting along with others without exhibiting behavioral extremes
- Responding appropriately to changes in the work setting
- Traveling to unfamiliar places including use of public transportation
- Setting realistic goals or making plans independently of others.

The Mental Residual Functional Capacity Assessment was credible and consistent with presented evidence. The psychiatrist-stated restrictions were indicative of marked restrictions in social interaction and persistence.

Consideration was given to whether Claimant was sufficiently compliant with treatment. Claimant testimony suggested that her depression stems, in part, from her boyfriend of 18 years committing suicide last year. It would seem that therapy would be an appropriate path for dealing with such a tragedy. Claimant testified that she has only seen her therapist approximately 3 times despite an apparent need for more therapy. Claimant's claim of disability would be more compelling with documentation of more therapy.

Claimant has no history of suicide attempts which is somewhat indicative of less than marked restrictions. Claimant testified she has not attempted suicide because it is against her religion. Claimant testified that approximately 9 years ago, she voluntarily committed herself to a hospital after feeling suicidal. Claimant also testified that she often thinks about suicide.

There was also some indication that Claimant's symptoms were exaggerated. For example, Claimant initially testified that she only has 4 good days in a month. Claimant

also testified that she does not eat on those days. Claimant's testimony was indicative of someone who lost a dangerous amount of weight. Claimant testified that she lost 33 pounds over 7 months. If Claimant did not eat 26 out of 30 days, a greater weight loss would have likely occurred. Appetite difficulties also did not appear to be a documented complaint in Claimant's medical records.

Statements from Claimant's psychiatrist and the brief treatment history which was verified were indicative of marked restrictions to Claimant's persistence and ADL completion. It is found that Claimant meets Part B of the affective disorder listing.

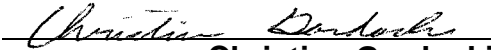
It is found that Claimant meets the affective disorder listing. Accordingly, it is found that Claimant is disabled and that MDHHS improperly denied Claimant's SDA application by finding that Claimant was not disabled.

DECISION AND ORDER

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

- (1) reinstate Claimant's SDA benefit application dated May 8, 2015;
- (2) evaluate Claimant's eligibility 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 benefits.

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


Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human
Services

Date Signed: **8/11/2015**

Date Mailed: **8/11/2015**

GC/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

CC:

[REDACTED]
[REDACTED]
[REDACTED]
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