

**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.: 15-008198
Issue No.: 2009
Case No.: ██████████
Hearing Date: July 15, 2015
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 July 15, 2015, from Taylor, Michigan. Participants included the above-named Claimant. ██████████ Claimant's spouse, testified on behalf of Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████ medical contact worker.

ISSUE

The issue is whether MDHHS properly terminated Claimant's eligibility 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. Claimant was an ongoing MA benefit recipient.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On May 19, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of MA eligibility (see Exhibits 2-7).
4. On May 22, 2015, MDHHS terminated Claimant's eligibility for MA benefits, effective July 2015, and mailed a notice informing Claimant of the termination.
5. On May 29, 2015, Claimant requested a hearing disputing the termination of MA benefits.

6. Claimant alleged disability based on bipolar disorder, anxiety disorder, asthma, and other physical ailments.

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). MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the 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.* It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

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.*, p. 2.

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. A functionally identical definition of disability is found under MDHHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following (see BEM 260 (7/2014), p. 10):

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

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).

The analysis of Claimant's MA benefit eligibility depends on whether Claimant was an applicant or an ongoing recipient. Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. Claimant was an ongoing MA recipient, based on a previous administrative hearing decision of disability (see Exhibits 115-125).

In evaluating a claim for ongoing MA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The below described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no presented evidence that Claimant received any wages since receiving MA disability-related benefits.

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or

equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. This consideration requires a summary and analysis of presented medical documents.

Hospital documents (Exhibits 62-88) from an admission dated January 20, 2015, were presented. It was noted that Claimant presented with a complaint of abdominal pain. It was noted that Claimant underwent a duodenoscopy which suggested bile reflux. An impression of mild chronic gastritis was noted. A discharge date of January 21, 2015 was noted.

A Psychiatric/Psychological Examination Report (Exhibits 110-112) dated March 12, 2015, was presented. The form was completed by a treating psychiatrist (per Claimant, a 15 year history with Claimant). Claimant's GAF was noted to be 60.

A mental status examination report (Exhibits 8-11) dated April 24, 2015, was presented. The report was noted as completed by a consultative psychiatrist. The following mental health symptoms were reported by Claimant: depression, suicidal thoughts, audio hallucinations, irritability, paranoia, crying spells, isolation, and low self-esteem. Three previous suicide attempts were reported. Three psychiatric hospitalizations, most recently in 2006, were reported. The examiner noted that Claimant had fairly good contact with reality and a flat affect. Diagnoses of major depressive disorder, schizoaffective disorder, and a history of alcohol abuse were noted. The examiner noted that Claimant had difficulty giving responses. The examiner opined that Claimant was not able to function on a fully sustained basis.

An internal medicine examination report (Exhibits 13-21) dated April 24, 2015, was presented. The report was noted as completed by a consultative physician. Claimant reported complaints of asthma, HTN, shortness of breath, recurrent chest pain (10 episodes from last 30 days), and heel spurs. Obesity was noted. Tandem walk, toe walk, and heel walk were noted as slowly performed. Reduced ranges of motion were noted in Claimant's lumbar flexion and bilateral hip forward flexion (50° tested - normal 100°). It was noted that Claimant was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching.

Hospital documents (Exhibits 22-53) from an admission dated June 14, 2015, were presented. It was noted that Claimant presented with complaints of a cough, chest tightness, and dyspnea. It was noted that Claimant was tearful during her physical examination and complained of anxiety attacks. An impression of no active disease was noted following views of Claimant's chest. It was noted that Claimant's ejection fraction was normal. A discharge date of June 15, 2015 was noted.

A Clinical Summary dated July 7, 2015, (Exhibits A1-A3) from a treating physician was presented. A list of 59 active problems was noted. Claimant's active problems included the following: chest pain, asthma, bilateral hand osteoarthritis, gastritis, sleep apnea,

headaches, anxiety, bruxism, bipolar disorder I, chronic gastritis, GERD, foot pain, asthma, plantar fascial fibromatosis, and depression. A list of 24 active medications was noted.

Claimant testified that she has numerous medical problems. Claimant's testimony was supported with presented documents, however, Claimant most significant problem was bipolar disorder I. Bipolar disorder is an affective disorder 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.

The most compelling evidence that Claimant is not disabled was her GAF of 60. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that 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. Moderate symptoms, particularly those that border on mild symptoms, are not indicative of disability. Other evidence was more supportive of a disability finding.

Claimant testimony and presented records indicated that Claimant struggles with concentration, anhedonia, suicidal ideation, and decreased energy. It is found that Claimant meets Part A of the affective disorder listing.

Claimant testified that she has difficulty with stress. Claimant provided a one-month old illustration. Claimant testified several bill collectors called concerning Claimant's stepdaughter. Claimant testified that she was "freaking-out" over the telephone ringing. Claimant also equated the quantity of calls to her previous work and imagined that she'd similarly react to repeated calls in a workplace setting.

Claimant and her spouse testified that Claimant is particularly unstable when she feels threatened. Claimant's spouse testified that his wife goes into a panic attack whenever she deals with her stepdaughter.

Claimant testified that she essentially watches television all day. Claimant testified that she tries to perform light cleaning and some cooking but often becomes forgetful in her

cooking preparation. As an example, Claimant testified that she may forget to add water causing a meal to be burned.

Claimant testified that she has difficulty with handling any stress. Claimant testified that she is anxious around loud noises (e.g. motorcycles, loud music...). Claimant testified that she has difficulty remembering anything that she read. Claimant testified that when she worked, her concentration was much better. Claimant's spouse provided comparable testimony about his wife.

Claimant's and her spouse's testimony was credible. The testimony was also indicative of severe psychological symptoms that would preclude Claimant to successfully overcome any increase in mental demands (i.e. work).

A Mental Residual Functional Capacity Assessment (Exhibits 108-109) dated March 12, 2015 was presented. The assessment was noted as completed by a psychiatrist; Claimant credibly testified that she had a 15 year history with her 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's psychiatrist noted that Claimant is bipolar. Claimant's psychiatrist stated that Claimant gets depressed and suicidal. It was noted that Claimant had to stop working several times in the past because of her symptoms. Working was noted to be a danger to Claimant and others. Inexplicably, Claimant's psychiatrist skipped the form's first 6 work-related abilities; two other restrictions were not known. Claimant's psychiatrist found Claimant to be markedly limited in the 12 remaining work-related abilities which included the following:

- Performing activities within a schedule and maintaining attendance and punctuality
- Sustaining an ordinary routine without supervision
- Working in coordination or proximity to other without being distracting
- Making simple work-related decisions
- Completing a normal workday without psychological symptom interruption
- Interacting appropriately with the general public
- Asking simple questions or requesting assistance
- Accepting instructions and responding appropriately to criticism
- Getting along with others without exhibiting behavioral extremes
- Maintaining socially appropriate behavior and adhering to general cleanliness standards
- Responding appropriately to changes in the work setting
- Setting realistic goals or making plans independently of others.

The presented assessment of Claimant's psychological work restrictions was consistent with marked restrictions in social interaction and coping with stress. The assessment was also consistent with Claimant's testimony and treatment history.

Presented evidence tended to verify that Claimant would be unable to deal with the social interactions and stress of employment. Any attempts by Claimant to work would likely result in decompensation. Claimant's psychiatrist (see Exhibit 109) made similar statements concerning Claimant's inability to work. The statement by a consultative psychologist selected by MDHHS that Claimant was unable to consistently function was further support for a finding of disability.

It is found that Claimant meets the listing for affective disorders and is a disabled individual. Accordingly, it is found that MDHHS improperly terminated Claimant's MA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly terminated Claimant's MA eligibility. It is ordered that MDHHS:

- (1) reinstate Claimant's MA eligibility, effective July 2015, subject to the finding that Claimant is a disabled individual;
- (2) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (3) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for ongoing 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: July 17, 2015

Date Mailed: July 20, 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]
[REDACTED]
[REDACTED]
[REDACTED]