

**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.: 15-012166
Issue No.: 4009
Case No.: ██████████
Hearing Date: August 20, 2015
County: Wayne (76)

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, a telephone hearing was held on August 20, 2015, from Detroit, 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 April 24, 2014, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On May 27, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 15-20).
4. On an unspecified date, MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On July 10, 2015, Claimant requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Claimant was a 48-year-old female.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's highest education year completed was the 8th grade.
9. Claimant has a history of semi-skilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to diagnoses of lower back pain, bladder incontinence, respiratory problems, and heart palpitations.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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 evidence.

A mental status examination report (Exhibits 52-54) dated June 2, 2014, was presented. The report was noted as completed by a consultative psychiatrist. The following mental health symptoms were reported by Claimant: suicidal thoughts, mood swings, visual and audio hallucinations, social isolation, and mistrust of others. A reported history of drug abuse and suicide attempts was noted. Noted observations of Claimant made by the consultative examiner include the following: depressed mood, constricted affect, spontaneous and blocked speech, poor sleep pattern, low self-esteem, low motor activity, some insight, and orientation x3. Diagnostic impressions of schizoaffective disorder, HTN, high cholesterol, back pain, heart problems, and breathing problems were noted. A fair-to-guarded prognosis was provided. The examining psychiatrist opined Claimant could understand and follow simple instructions

Physician office visit notes (Exhibit 51) dated October 1, 2014, were presented. A diagnosis of COPD was noted. Pulmonary testing was ordered.

Physician office visit notes (Exhibits 48-50) dated October 1, 2014, were presented. A diagnosis of sciatica was noted. An MRI for Claimant's lumbar was ordered.

Documents from a hospital neurosurgery department (Exhibit 45-46) dated January 13, 2015, were presented. A need for a cane was noted.

A mental status examination report (Exhibits 32-35) dated April 17, 2015, was presented. The report was noted as completed by a consultative psychiatrist. The following mental health symptoms were reported by Claimant: word finding difficulties, crying spells, sleep difficulty, appetite fluctuations, suicidal thoughts, history of hallucinations, social isolation, and paranoia. It was noted that Claimant reported her parents were alcoholics and drug abusers. Claimant reported being a victim of childhood sexual abuse. The examining psychiatrist noted that Claimant was emotional and had a fairly good contact with reality. The examiner stated that Claimant displayed problems with focusing and concentrating. Diagnosis of major depressive disorder, and nicotine use were noted. It was noted that Claimant could not manage her own funds.

An internal medicine examination report (Exhibits 36-44) dated April 27, 2015, was presented. The report was noted as completed by a consultative physician. Claimant reported complaints of asthma, high-blood pressure, heart disease, irregular heartbeat, mental illness, incontinence, fibromyalgia and joint pain, history of stroke, lumbar radiculopathy, and COPD. It was noted that Claimant was an active smoker since the age of 11 year. A lumbar surgery from November 2014 was noted. It was noted that Claimant utilized an internally-inserted mesh to assist with bladder control. It was noted that Claimant brought a cane but did not use it during the examination. It was noted that tandem walk, toe walk, and heel walk were slowly performed. The physician's impression generally mirrored Claimant's complaints. Reduced ranges of motion were noted in Claimant's lumbar flexion (75°- normal 90°) and bilateral hip forward flexion (50°- 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, though most were limited by pain. The examiner stated that clinical evidence supported a need for a cane.

Physician office visit notes (Exhibits 10-12) dated May 28, 2015, were presented. Problems of multiple lumbar disc herniations (since October 2014), lumbar radiculopathy, COPD, and tobacco abuse were noted. Various medications were noted as prescribed. It was noted that Claimant was to start taking doxycycline. Recommendations to begin Spiriva, Qvar, and doxycycline were noted. A recommendation to quit smoking was also noted.

Patient Information Leaflets (Exhibits 3-6) each dated June 1, 2015, were presented. The leaflets indicated prescriptions for Pristiq, Diazepam, and Risperidone.

Mental health treatment agency office visit notes (Exhibits 13-14) dated June 26, 2015, were presented. An Axis I diagnosis of major depressive disorder (recurrent, severe with psychotic tendencies) was noted. Current medications were noted to include Pristiq, Risperidone, Valium, and Mirtazipine.

Claimant testified that she underwent surgery to address problems with a bulging disc at L4-L5 and a second problem at L2-L3. Claimant testified the surgery did not alleviate her ongoing lumbar pain. Claimant testified that she had an epidural lumbar injection 7 weeks ago, but it did not relieve her pain. Claimant testified she will undergo a second injection with stronger medicine. Claimant testified she may need a second surgery though she is hesitant based on the lack of symptom relief following her first surgery.

Claimant testified she has bladder incontinence. Claimant speculated that her bladder was damaged by childhood sexual abuse. Claimant says she does not have the muscles to hold her urine. Claimant estimated that she goes to the bathroom 10 times per day.

Medical records of previous lumbar surgery were not presented. A lumbar surgery in November 2014 was referenced as reported by Claimant. A prescribed cane from a neurosurgery physician was also verified in January 2015. The evidence was indicative that Claimant underwent some kind of lumbar surgery in late 2014.

Evidence of radiography was not presented. The absence is particularly notable because it was verified that an MRI was ordered.

Claimant testified that she is disabled, in part, due to breathing problems. A diagnosis of COPD was verified. An order for respiratory testing was presented, but again, test results were not presented.

Claimant also testified she has heart palpitations and fibromyalgia. Claimant testified that her combination of problems limit her walking to 30 minutes. Claimant also testified that she was restricted to sitting for 15-30 minute periods.

Claimant testified she sees a psychiatrist and a social worker regularly. Claimant testified she is a schizophrenic manic-depressive. Claimant testified she has visual hallucinations of her parents (and other deceased persons) when she is manic. Claimant testimony estimated that she has 3-4 such monthly episodes. Claimant also testified she still experiences other depression symptoms (e.g. paranoia and social isolation).

It is found that Claimant established significant impairment to basic work activities for a period longer than 90 days. Accordingly, 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 primary impairment involved depression. Depression 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.

Presented records sufficiently verified ongoing symptoms of paranoia, sleep disturbance, suicidal ideation, difficulty concentrating, and paranoid thinking. It is found that Claimant meets Part A of the affective disorder listing.

Only one mental health treatment visit document was verified. For a variety of reasons, a failure to verify treatment is generally not compatible with a finding of disability.

One problem with a limited treatment history is that there is a potential for improvement if proper medication and therapy is pursued. Based on presented documents, there is little basis to determine the severity of Claimant's symptoms following the single verified treatment.

Another problem with an absence of treatment documents is that the absent records could provide relevant details that were not otherwise verified. For example, Claimant may have established disabling mental health symptoms, however, the cause of symptoms could be medication non-compliance or ongoing drug abuse. Such a finding would be speculative; however, it could be reasonably contended that a finding of disability would be as equally speculative without additional treatment documents.

The most compelling evidence of disability was a statement made by a consultative psychiatrist in April 2015. The examining psychiatrist opined that Claimant, at that time, could not function at a fully sustained basis. The statement was general but is consistent with a finding of disability. The statement is consistent with Claimant's diagnosis of severe depression with psychotic symptoms. It is also notable that three

different psychiatrists made the same diagnosis. Generally, psychotic symptoms (e.g. hallucinations) are highly indicative of disability.

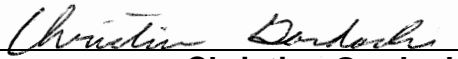
Presented evidence was not overwhelming, but was sufficient to establish that Claimant has marked restrictions to social interactions and maintaining concentration. It is found that Claimant meets the listing for affective disorders and is disabled. Accordingly, it is found that MDHHS erred in denying Claimant's SDA application.

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 April 24, 2014;
- (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: **8/26/2015**

Date Mailed: **8/26/2015**

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]