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

IN THE MATTER OF:

MAHS Reg. No.: 15-018069
Issue No.: 4009
Agency Case No.:
Hearing Date: December 14, 2015
County: SANILAC

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on December 12, 2015, from Sandusky, Michigan. The Petitioner was represented by the Petitioner . The Department was represented by , Eligibility Specialist.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. The Petitioner applied for State Disability Assistance (SDA) on .

2. The Medical Review Team denied the application on . The Department notified the Petitioner of the denial on .

3. The Petitioner requested a timely hearing on .

4. The Petitioner has alleged mental disabling impairments which include Depression recurrent, severe and anxiety.

5. At the time of the hearing the Petitioner was 58 years of age and is presently 59 with a birth date. The Petitioner is 5'3" in height and weighs 145 pounds. The Petitioner completed high school and a four year degree in nursing. The Petitioner is a RN.

6. The Petitioner's past relevant work history is as a Registered Nurse and she last worked in June 2014 after working for 30 years in many positions, including hospital settings where she was an intensive care nurse, advanced cardiac a telemetry nurse and did some teaching. Petitioner was not working at the time of the hearing.

7. The Petitioner's impairments have lasted for 90 days and are expected to last for 12 months or more.

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it 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 CRF 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant

takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Petitioner is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Petitioner's alleged impairment(s) is considered under Step 2. The Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of

age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;

4. Use of judgment;

5. Responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985).

As previously noted, the Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized below, the Petitioner has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. Accordingly, the Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on the Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Petitioner is not disqualified from receipt of MA-P benefits under Step 2.

A summary of the Medical evidence follows.

A psychiatric Examination Report was provided by the Petitioner's current treating doctor. The DHS 49D notes that Petitioner is not able to work but does not elaborate why and references no test results. The Report is dated December 21, 2015 and the

Petitioner has seen her treating doctor since [redacted]. A Medication Review report was provided. The review notes that a depression assessment was positive based on screening. The diagnosis was Major depressive Disorder, recurrent episodes, severe; Generalized Anxiety Disorder and Depressive Disorder due to another medical condition, (rule out). The review notes alcohol use disorder in remission and opioid use disorder in remission. The examining doctor notes that thought processes were limitied but relevant and noted the Petitioner was cognitively stable with fair insight was fair with judgement adequate and non suicidal ideation was reported. Mood was reported as anxious and depressed with doctor noting that affect was mood congruent. The Petitioner reported trouble sleeping and noted that patient was hypervigilant with intense eye contact. Petitioner reported very high anxiety and low mood, 2-3 out of 10 with 10 being the best. The Petitioner was attending therapy sessions. A Mental Residual Functional Assessment DHs 49E was requested but not completed by the doctor. The Petitioner's current GAF score remained at 40.

On [redacted] a Psychiatric Evaluation was performed by [redacted]. The Petitioner presented with longstanding reported depression. The examiner noted that Petitioner had a blunted to flat affect, spoke with a monotone with mild to moderate psychomotor retardation present. Suicidal ideation was denied. No gross psychotic features were noted. Thought processes were slow but relevant. Cognitively a minimal concentration was present. No memory difficulties were noted. Petitioner was abstract with her thoughts. Petitioner able to do calculation quickly and accurately with excellent fund of knowledge. Insight was partial and judgement was fair. Diagnosis was Major Depressive Disorder recurrent and active. Alcohol use disorder current and active. Opioid use disorder in remission, tobacco use disorder was mild. The patient was recommended for psychotherapy on a regular basis. The GAF score was 40.

The Petitioner was interviewed at the [redacted] on [redacted] to develop a treatment plan. At the time of the interview the Petitioner was noted as independent in all ADL's, and reported depression and lack of motivation. The Petitioner reported self-medicating for years and spent all her money when her son went to prison. Self-reported history of drinking and gambling. The Petitioner completed a Daily Living Skills self-evaluation which noted most activities were independent and need for guidance/ direction in paying bills, housekeeping, laundry, cooking and grooming. The Petitioner was asked to leave her last job due to depression and patient complaints.

On [redacted] the Petitioner had a medication review and evaluation. At the time the treating psychiatrist noted eye contact to be limited, speech was delayed, slow and monotone. Mild to moderate psychomotor retardation. Mood was depressed, affect was blunted. Expressions of helplessness noted. Thought processes were limited, insight adequate and judgment intact.

On [redacted] the Petitioner had an initial assessment by the [redacted] Provider that she treats with. The evaluation consisted of extensive interviewing of Petitioner. The review notes report of one beer 2 days prior to evaluation. The examiner noted Petitioner was initially closed and guarded, knew the current President but not the past. Limited insight was noted as she was forced by family intervention to get help. Able to recall 3 items and cognitive functioning was intelligent. Petitioner's thought processes were easily distracted.

During the hearing the undersigned observed the Petitioner to be withdrawn and speaking in soft tones in a monotone voice, had little eye contact and sounded and appeared depressed. The Petitioner credibly testified that she is anxious around people and does not go out. The Petitioner described her sleep patterns as either not being able to sleep or sleeping all the time and not getting out of bed. The same was true for her eating habits, she either eats or has no appetite especially with anxiety. If very anxious, the Petitioner does not concentrate well. The Petitioner has ceased drinking since August 2015. Petitioner also credibly testified that she had to be reminded to groom and bathe herself, and clean up after herself. It is also noted that at the time of her application and completion of the DHS 49-F, the caseworker noted as observations, forgetful memory, signs of distress, signs of fatigue, difficulty understanding and withdrawn.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

In light of the medical evidence presented Listing 12.04 Affective Disorders was examined.

This Listing requires that the following criteria be demonstrated:

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: 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 … and

12.04 B requires that two of the following are met:

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;

Based upon the above criteria it is determined that the medical evidence demonstrates that 12.04 A. 1. which include, A 1, a., b., c., d., e.are demonstrated. Based upon the treating doctor's symptoms observed and clinical findings the Petitioner's has demonstrated the she has persistence, either continuous or intermittent of more than several of the requirements set forth in paragraph 12.04 A.

In addition the medical evidence has demonstrated that the Petitioner has met the necessary requirements of 12.04B, 2 and 3. Due to the Petitioner's past alcohol dependence the question was examined as to whether alcohol dependence was material to the Petitioner's disabling impairments. In light of the Petitioner's sobriety and current remission it is determined alcohol dependence is not material.

Based upon a review of the treating doctor's evaluation which confirms the Petitioner's major severe depression characterized by sleep disturbance, difficulty concentrating, flat affect, and diminished eye contact delayed speech which was slow and monotone. Mild to moderate psychomotor retardation. Mood was depressed, affect was blunted. Expressions of helplessness noted. The most important indicia of continuing severe depression, was the Petitioner's GAF score which has been 40 throughout the time she has been treating with her current doctor.

Therefore, it is determined that the Petitioner has satisfied the requirements or its medical equivalent of listing 12.0 4 for depressive syndrome and therefore is found disabled at Step Three of the analysis with no further analysis required.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

DECISION AND ORDER

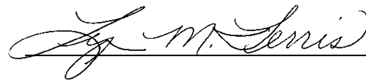
Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall re-register and re-process the Petitioner's SDA application dated [redacted] and determine whether the non medical requirements are met.

2. The Department shall issue an SDA supplement which the Claimant is otherwise entitled to receive in accordance with Department policy.

3. A review of this matter shall be conducted in February 2017.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **February 12, 2016**

Date Mailed: **February 12, 2016**

LMF / hw

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: