

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2008-10978
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 17, 2008
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on April 17, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

FINDINGS OF FACT

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

- (1) Claimant is a single, 31-year-old high school graduate who lives with her parents; she stands approximately 5'4" tall and is medically obese at 195 pounds (BMI=33.5) (Department Exhibit #1, pgs 3-5).
- (2) Claimant has no relevant work history, having been most recently employed briefly at a retail shop over the 2005 Christmas season (Department Exhibit #1, pg 8).

(3) Claimant's psychological report, dated August 22, 2007, confirms her mixed Bipolar Disorder diagnosis with Personality Disorder (NOS) and an extensive polysubstance abuse history (Department Exhibit #1, pgs 59 and 103).

(4) Claimant has a history of mood swings, depression and multiple suicide attempts; she broke up with her boyfriend in May, 2007 (Department Exhibit #1, pgs 5, 92 and 108).

(5) Although claimant complains of chronic, debilitating headaches daily, her February 20, 2007 head CT scan reveals no evidence of intracranial hemorrhage, ischemia or mass effect (Department Exhibit #1, pg 85).

(6) Claimant's treating doctor has classified her headaches as migraines and he was prescribing 25 mgs of [REDACTED] daily in June, 2007 (Department Exhibit #1, pg 6).

(7) On May 14, 2007, claimant was treated at [REDACTED] for an attempted suicide via drug overdose (Department Exhibit #1, pg 5)(See also Finding of Fact #4 above).

(8) Claimant was discharged with continuation of outpatient mental health services at [REDACTED] recommended; claimant has complied with this treatment recommendation.

(9) On July 23, 2007, claimant's treating psychiatrist found her moderately limited or markedly limited in every area of psychological functioning required to be assessed during the disability determination process except in her ability to understand/carry out simple one or two step instructions and her ability to remember locations and work-like procedures (Department Exhibit #1, pgs 97 and 98).

(10) Claimant's psychiatrist indicated her Global Assessment Function (GAF) was still 40-45 as of November 20, 2007 (throughout the past year), and that she was incapable of managing any benefit funds she may be entitled to receive (Department Exhibit #1, pgs 2A, 96 and 110).

(11) Claimant reported she has been in substance abuse treatment and counseling since May, 2006, but her medical records document multiple relapses since then (Department Exhibit #1, pg 59; New Medical Evidence, submitted 3/10/08 and 3/20/08).

(12) In February, 2008, claimant spent approximately a week in the psychiatric unit at [REDACTED] on an involuntary admission because she was found trying to jump in the [REDACTED] from an overpass (New Medical Evidence, submitted 3/10/08 and 3/20/08).

(13) As of discharge on February 20, 2008, claimant was placed on 90 mgs of [REDACTED] a and 100 mgs of [REDACTED] daily (New Medical Evidence, submitted 3/20/08).

(14) Claimant still experiences obsessed thought processes, impaired judgment/impulse control/attention/concentration, as well as disturbed sleep, ongoing anxiety/depressed mood, low self esteem and isolative behaviors (See also Finding of Fact #10 above).

(15) On October 3, 2007, an independent evaluator stated in relevant part:

[Claimant] states that she has significant pain which limits her ability to lift, stand, walk and even sit. The medical evidence does not support these extreme limitations. She has normal strength, normal gait, full dexterity. She has significant psychiatric overlay with regards to her physical limitations. The RFC restrictions take into consideration her multiple complaints of pain despite the little clinical evidence to support such limitations (Department Exhibit #1, pg 12).

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). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by

a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

The specifically applicable regulations state:

"Disability" is:

...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.

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or

perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

...Where "marked" is used as a standard for measuring the degree of limitation it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively, and on a sustained basis. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

We do not define "marked" by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

We do not define "marked" by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...The context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness, and sustainability. It is necessary to define the

extent to which the individual is capable of initiating and participating in activities independent of supervision or direction. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent

determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

Claimant's impaired mental/emotional function and inability to maintain prolonged employment because of it, as well as her current need for continued psychiatric treatment, is extensively documented in the records submitted and in the credible hearing testimony. Furthermore, while claimant's sporadic relapse into substance abuse also is extensively documented, this Administrative Law Judge finds it is not material because she is convinced the severity and longevity of claimant's mental/emotional impairments would prevent her from obtaining and/or keeping gainful employment even if she permanently stopped using drugs immediately. Claimant has established deeply ingrained marked limitations in function and extensive maladaptive behaviors that would currently prevent any success in the competitive work force. In fact, claimant's documented constellation of symptoms meets Listing 12.04(A) and (B), even without consideration of the self-reported physical symptoms which have been attributed to psychological overlay. As such, the department's denial of claimant's MA/retro-MA/SDA application simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not currently legally disabled.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

(1) The department shall process claimant's September 17, 2007 MA/retro-MA/SDA application, and shall award her all the benefits to which she may be entitled as long as she meets the remaining financial and non-financial eligibility factors.

- (2) The department shall review claimant's condition for improvement in April, 2010.
- (3) The department shall obtain updated medical evidence from all claimant's treating providers beginning in March, 2008 and continuing through her review month (4/10).
- (4) The department also shall schedule claimant for independent consultative psychological and physical examinations at the time of her review.
- (5) The department shall appoint a Protective Payee to manage claimant's monthly cash grant (SDA) due to her high risk of substance abuse relapse.
- (6) **CLAIMANT SHOULD BE AWARE THAT HER FAILURE TO FOLLOW ALL TREATMENT RECOMMENDATIONS MAY RESULT IN THE DENIAL OF BENEFIT CONTINUATION AT REVIEW.**

/s/_____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 4, 2009

Date Mailed: May 5, 2009

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

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 was made, within 30 days of the receipt date of the rehearing decision.

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