

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: 2008-14580
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 19, 2008
Montcalm 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 June 19, 2008. Claimant and her mother personally appeared and testified. Claimant was represented by [REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by 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 19-year-old female with an Antisocial Personality Disorder diagnosis who dropped out of school in tenth grade.

(2) Claimant lives in her mother's basement; her peer interaction is self-confined to two itinerant young men of her approximate age with whom she grew up.

(3) Claimant has never been gainfully employed because she cannot tolerate being around people, especially those in authority.

(4) At age 11, claimant's family physician documented a consistent, very angry affect (Department Exhibit #1, pg 23).

(5) At age 13, claimant was still wearing pull-ups, she was frequently angry to the point of rage, she would cry often for little or no reason and she was completely uncooperative at school, at home and with her treating doctors (Department Exhibit #1, pg 23).

(6) By age 14, claimant had been diagnosed with: (1) Oppositional Defiant Disorder (ODD); (2) Attention Deficit/Hyperactivity Disorder (ADHD); (3) Reactive Attachment Disorder (RAD) and (4) Post Traumatic Stress Disorder (PTSD) through her then attending psychiatrist Dr. Razvan Adam (Department Exhibit #1, pg 23).

(7) On June 14, 2008 (at age 17), claimant was independently evaluated by a consulting psychologist who summed up her mental health history and current psychological capacity as follows:

...In evaluating [claimant], there is mention of Bipolar Disorder and Attention Deficit Disorder, but it appears the most significant issue is that of Conduct Disorder versus Oppositional Defiant Disorder. I do believe Conduct Disorder is a more appropriate diagnosis under which to evaluate this young lady...

...I did review Attention Deficit/Hyperactivity Disorder with [claimant's mother]. It appears the following for inattention have persisted for at least six months at a level that is maladaptive and inconsistent with the developmental level. She does fail to give

close attention to details and makes careless mistakes. She has difficulty sustaining attention in play activities. She does not follow through on instructions and does not complete school work, chores or duties. She has difficulty organizing tasks and activities. She avoids dislikes and is reluctant to engage in tasks that require sustained mental effort. She often loses things necessary for schoolwork and there appears to be no hyperactivity or impulsivity.

As [claimant] is going to be eighteen years of age in the immediate future, I believe it is necessary to point out historically and the literature supports that individuals with Attention Deficit Disorder and Conduct Disorders will either resolve these difficulties or develop Personality Disorders. Unfortunately, it does not appear [claimant] is going to outgrow her anti-authoritarian attitudes. She should be reviewed under Antisocial Personality Disorder because she perceives and interprets herself and her behaviors to other people differently. The range, intensity, the ability and the appropriateness of emotional response are problematic. Interpersonal functioning is deficit and lack of impulse control is readily apparent. In evaluating the specific criteria for Antisocial Personality Disorder, it does appear that certainly before the age of fifteen there has been a pervasive pattern of disregard for and violation of the rights of others and this is noted by the fact that she used to steal and she would "do things to other people," apparently problematic at one time but not currently. She does acknowledge impulsivity and the failure to plan ahead. She said, "I do it regardless of what's going to happen or the consequences." Apparently she is consistently irresponsible by her repeated failure to sustain work behavior or financial responsibilities and perhaps most importantly, there is a definite lack of remorse. She is indifferent to hurting, mistreating or assaulting the rights of other individuals.

As far as the Bipolar Disorder is concerned, I was not able to illicit impressive symptoms from [claimant] nor document any manic episodes. Bipolar Disorder may be a label attached as a result of the irritability component and aggressive behaviors, but I think [claimant's] largest behavioral deficit is that of Conduct Disorder and Antisocial Behavior. She acknowledges she does not feel any emotion and when reviewing past treatments, she acknowledges seeing a therapist, [REDACTED], at [REDACTED]...

[Claimant] will be eighteen years of age soon. She is a self-centered, obnoxious and abrasive individual. I do feel there is a component of ██████████ in existence in this individual. She has the inability to describe or be aware of others' emotions or moods. I would urge seriously consultative evaluation for Personality Disorder and psychotropic medication for the aggressive behavior she is demonstrating. This individual has been noncompliant with academic regulations since about the fifth grade and she is obviously a behavioral problem in the high school...(Client Exhibit D, pgs 2, 3 and 6).

(8) Claimant was not engaged in any mental health treatment or counseling as of her June 19, 2008 hearing date and she acknowledged a firm, personal opposition to engage in it.

CONCLUSIONS OF LAW

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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261.

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.

Michigan administers the SDA program. In assessing SDA eligibility, Michigan defers to the governing federal regulations, except for the shorter durational period cited above (90 days).

These regulations state in part:

"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. [SDA Duration = at least 90 days].

...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 psychiatric history and her current need for continued psychiatric treatment is extensively documented in the records submitted to date, as well as in the credible hearing testimony. Furthermore, claimant is 19 years old with no substantial gainful work history. She has established deeply engrained, marked limitations in normal social functioning and extensive maladaptive behaviors that would completely prevent any current, sustained success in the competitive work force. In fact, claimant's documented constellation of symptoms meets Listing 12.08(A) and (B). As such, the department's denial of claimant's August 15, 2007 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 disabled under the governing regulations.

Accordingly, the department's denial of claimant's August 15, 2007 SDA application is REVERSED and it is Ordered that:

- (1) The department shall process claimant's disputed application and award her all the benefits she is entitled to receive thereunder.
- (2) The department shall review claimant's mental/emotional condition for improvement in June, 2009.

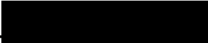
(3) The department shall obtain all current treatment notes, progress reports, etc. at the time of review.

(4) A Protective Payee shall be appointed to manage claimant's monthly cash grant (SDA) due to her complete lack of appropriate social functioning.

(5) **CLAIMANT SHOULD BE AWARE THAT HER FAILURE TO INITIATE AND CONTINUE WITH RECOMMENDED MENTAL HEALTH TREATMENT AND/OR COUNSELING WILL RESULT IN THE DENIAL OF CONTINUED BENEFITS AT REVIEW.**

/s/

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

Date Signed:  _____

Date Mailed:  _____

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.

MBM/db

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