

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg No: 2008-24479

Issue No: 2009, 4031

Case No: ██████████

Load No: ██████████

Hearing Date:

October 23, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE:

Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted on October 23, 2008. The Claimant appeared, along with ██████████, and testified. The Claimant was represented by Shane Gerritsen of L & S Associates, Inc. ██████████ appeared on behalf of the Department. At the Claimant's request, the record was extended for further medical evidence to be submitted.

The additional evidence was received and reviewed.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and the State Disability Assistance ("SDA") 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 Claimant submitted a public assistance application seeking MA-P, Retro-MA, and SDA benefits on October 29, 2007.

2. On February 29, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant capable of performing other work. (Department Exhibit 1)

3. On February 29th, the MRT also denied the Claimant’s SDA finding the Claimant’s impairment did not prevent employment for 90 days or more. (Department Exhibit 1)

4. On March 6, 2008, the Department sent the Claimant an eligibility notice informing the Claimant that his MA-P, Retro-MA, and SDA benefits were denied. (Department Exhibit 2)

5. On March 3, 2008, the Department received the Claimant’s Hearing Request protesting the determination that the Claimant is not disabled. (Department Exhibit 3)

6. On July 17, 2008, the State Hearing Review Team (“SHRT”) found the Claimant’s impairment as non-severe.

7. The Claimant’s alleged disabling impairments are due to seizures, psychological disorders/depression, and chronic arm pain.

8. The Claimant’s impairment(s) will last or have lasted for 12 months or more.

9. At the time of hearing, the Claimant was [REDACTED]
[REDACTED].

10. The Claimant completed 10th grade and can read, write, and perform basic math.

11. The Claimant's previous employment includes general laborer positions.
12. The record was extended based upon the Claimant testimony that he received additional medical/psychological treatment.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, 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").

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 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) 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 416.929(a)

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 applicants 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 (i.e. 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 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 an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 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 four and five. 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)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in approximately July of 2003. The Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. 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
6. 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 severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

On April 6, 2006, the Claimant presented [REDACTED] an initial psychiatric evaluation [REDACTED] the Claimant's treating psychiatrist) diagnostic impression was that the Claimant suffered from Schizoaffective Disorder, mixed personalty traits, and seizures. The Claimant's Global Assessment Functioning [REDACTED] her prognosis was guarded.

On July 7, 2007, the Claimant was presented [REDACTED] room with complaints of nausea, vomiting, weakness, and dizziness resulting in an overnight stay. [REDACTED] the Claimant with an acute toxicity related to a prescribed increased Dilantin dosage.

On July 23, 2007, the Claimant was seen [REDACTED] his annual psychiatric evaluation [REDACTED] Claimant with having a history of seizure disorder and depressive psychotic symptoms, noting his previous combative behavior has improved with his current medication of Haldol [REDACTED] impressions found the Claimant with schizoaffective disorder, mixed personality traits, and seizure disorders with concerns regarding the Claimant's interpersonal, financial and academic abilities. The Claimant's prognosis was fair to guarded.

On January 28, 2008, the Claimant was [REDACTED] [REDACTED] found the Claimant's EEG report as normal and determined that his history of seizures (one in February 2007 and the other in March 2007) was well controlled with

his current medication. Examination of the left arm revealed a vertical scar with no localized tenderness, redness or swelling. Supination and pronation were mildly restricted with normal flexion and extension.

On March 24, 2008, the Claimant presented [REDACTED] al with complaints of chest pain. An EKG was performed and x-rays taken, which were found normal. [REDACTED] discharged diagnosis was chest wall pain.

On May 7, 2008, [REDACTED] out a Psychiatric/Psychological Examination Report (FIA-49D) and a Mental Residual Functional Capacity Assessment (FIA-49E). As noted in previous evaluations, [REDACTED] the Claimant with Schizoaffective Disorder, mixed personality traits, seizure disorder, interpersonal, financial, and academic concerns, and borderline intellectual functioning. [REDACTED] found the Claimant to be markedly limited in his ability to sustain an ordinary routine without supervision as well as being unable to work in coordination with or proximity to others without being distracted. Further, the Claimant is markedly limited in his ability to interact appropriately with the public; accept instructions and respond appropriately to criticism from supervisors; get along with co-workers or peers without distracting or exhibiting behavioral extremes; maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. The ability to respond to change in a work setting and the ability to set realistic goals or make plans independently of others is markedly limited as well.

In this case, the Claimant has presented medical evidence establishing that he does have some psychological limitations on his ability to perform basic work activities such as understanding, carrying out, and remembering instructions; use of judgment; responding appropriately to supervision and co-workers; and dealing with changes in a routine work setting. The medical evidence has established that the Claimant has an impairment, or combination

thereof, that has more than a de minimis effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months. Therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged disabling impairments due to seizures, psychological disorders/depression, and chronic arm pain. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 11.00 defines neurological disorders to include seizures. In epilepsy, regardless of etiology, the degree of impairment is determined according to type, frequency, duration, and sequelae of seizures. 11.00A At least one detailed description of a typical seizure is required and includes the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena. *Id.* If professional observation is not available, testimony of persons other than the Claimant is essential for description of the type and frequency of the seizure. *Id.* Convulsive epilepsy is documented by detailed description of a typical pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment, with daytime episodes (loss of consciousness and convulsive seizures) or nocturnal episodes manifesting residuals which interfere significantly with activity during the day. 11.02A and B This criteria is applicable only if the impairment persists despite treatment. 11.00A

In this case, medical evidence presented shows that the Claimant was diagnosed with a seizure disorder which is controlled through prescribed medication. Accordingly to 11.00A, Listing 11.02 and 11.03 criteria is applicable only if the impairment persists despite the fact that

the individual is following prescribed antiepileptic treatment. On more than one [REDACTED] [REDACTED] Claimant's treating psychiatrist, documented the Claimant's seizure disorder is controlled with Dilantin, with his last seizure occurring in March 2007. Similarly [REDACTED] concluded the Claimant's seizure disorder is "well controlled on current medication." There was no evidence presented that the Claimant's impairment persists despite treatment therefore, the Claimant's impairment does not meet or equal Listing 11.02 or 11.03.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B 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). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning. 12.03 The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
1. Delusions or hallucinations; or
 2. Catatonic or other grossly disorganized behavior; or;
 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt Affect; or
 - b. Flat Affect; or
 - c. Inappropriate affect;

or

4. Emotional withdrawal and/or isolation;

AND

- B. Resulting in a least two of the following:

1. Marked restriction of activities of dialing 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 durations

OR

- C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic 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 changed 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.

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of 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 on 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 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 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.

In this case, medical evidence shows that the Claimant has schizoaffective disorder which encompasses two different conditions; schizophrenia and depression. The Claimant's psychiatric treatment with his current treating psychiatrist began in April of 2006 and has continued through the present. Although the Claimant takes antipsychotic medication (Haldol) the May 7, 2008 DHS 49-E documents several areas where the Claimant's ability for sustained concentration, social interaction, and adaption to work setting, etc. remains markedly limited. The Claimant's has a GAF of 52. Based upon the submitted medical documentation, the Claimant's mental impairment(s) have lasted continuously for more than a 12 month period and meet or equal the Listing impairments found at 12.03 and 12.04. Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, because the Claimant was found disabled for the purposes of the MA program, the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the October 29, 2007 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination.
3. The Department shall supplement the Claimant any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in accordance department policy in January of 2010.

/s/

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/06/09

Date Mailed: 01/09/09

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 the Circuit 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.

CMM

cc:

