

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: 2008-27817
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2008
Jackson 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 November 19, 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 nearly 45-year-old female ([REDACTED]) who lives independently in [REDACTED].

(2) Claimant has a high school diploma and a B.S. Degree in Communications from [REDACTED] (Department Exhibit #1, pg 95).

(3) Claimant is fully independent in all personal care and basic daily living activities; she has a valid driver's license and access to a roadworthy vehicle (Department Exhibit #1, pgs 81-84).

(4) Claimant stands approximately 5'7" tall and is morbidly obese at approximately 300 pounds (BMI=47.0)(Department Exhibit #1, pg 40).

(5) Secondary to obesity, claimant has high blood pressure and high cholesterol, both adequately controlled with her current prescription medications.

(6) On December 19, 2007, claimant filed a disability-based MA/SDA application alleging her diagnosed mental impairment (schizophrenia) renders her completely incapable of performing any type of substantial gainful work activity.

(7) Claimant's past relevant work history includes being a computer operator at [REDACTED] as well as working for [REDACTED] and [REDACTED]; at hearing, claimant said her most recent job ended in 2003 when she stopped working as a telephone customer service representative/credit manager, but during a mental status evaluation conducted on March 11, 2008, claimant said her last job at [REDACTED] ended in April 2006 (Department Exhibit #1, pg 95).

(8) An independent medical examination conducted on April 17, 2008, four months after claimant filed her disputed MA/SDA application, notes she has a history of dysfunctional uterine bleeding which is treated as her symptoms arise, but causes no major medical issues (Department Exhibit #1, pgs 53 and 97).

(9) Claimant spent three days inpatient on a voluntary psychiatric admission (10/26/07-10/29/07) due an exacerbation of her paranoid schizophrenic symptoms (Department Exhibit #1, pgs 104-106).

(10) Claimant's antipsychotic medication dosage ([REDACTED]) was readjusted to 80 mgs in the morning and 140 mgs in the evening; additionally, her [REDACTED] was decreased to 5 mgs, which she reported made her feel much calmer and better (Department Exhibit #1, pg 97).

(11) As of claimant's hearing date (11/19/08), she was still taking these medications and she reported full stabilization of symptoms, with her only side effects being fatigue and a general "slowdown" in activity level.

(12) A full mental status evaluation conducted on March 11, 2008, three months after claimant filed her disputed disability application found her to be fully oriented with good communication skills; socially and behaviorally she was deemed to be functioning within normal limits and her Global Assessment Function (GAF) score was 68 (normal)(Department Exhibit #1, pgs 93-95).

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.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

...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).

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).

e 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).

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...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).

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).

...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).

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).

...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).

In addition, when we evaluate the severity of mental impairments for adults (persons age 18 and over), we must follow a special technique at each level in the administrative review process. 20 CFR 416.920a(a).

Under the special technique, we must first evaluate your pertinent symptoms, signs, and laboratory findings to determine whether you have a medically determinable mental impairment(s). 20 CFR 416.920a(b).

We must then rate the degree of functional limitation resulting from the impairment(s) in accordance with paragraph (c) of this section and record our findings as set out in paragraph (e) of this section. 20 CFR 416.920a(b).

We have identified four broad functional areas in which we will rate the degree of your functional limitation: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR 416.920a(c).

When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: none, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: none, one or two, three, four or more. The last is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(d).

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process. If we do not find that you have a medically severe combination of impairments, we will determine that you are not disabled. 20 CFR 416.923.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

The medical records submitted to date reveal no severe physical impairments which would prevent claimant from working.

Likewise, the psychological and psychosocial evidence of record establishes claimant's schizophrenia is being effectively managed with psychotropics, as long as medication compliance is maintained. Furthermore, claimant demonstrates normal cognitive functioning with good reasoning, judgment and social skills. She is fully independent in all activities of daily living and self cares. In short, claimant has failed to establish any physical or mental impairment which would prevent her from being employed in any number of simple, unskilled jobs currently existing in the national economy, including the types of jobs she has held previously. As such, the department's denial of claimant's December 19, 2007 MA/SDA application must be upheld.

Claimant's biggest barrier to employability appears to be her lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED] [REDACTED] for training consistent with her skills, interests and abilities.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's December 19, 2007 MA/SDA application, based on a finding she lacks a legally disabling condition.

Accordingly, the departments' action is AFFIRMED.

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

Date Signed: November 30, 2009

Date Mailed: December 1, 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.

2008-28717/mbm

MBM/db

cc:

