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: 2008-31021
Issue No: 2009; 4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
December 11, 2008
Lapeer County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 in Lapeer on December 11, 2008. Claimant personally appeared and testified under oath.

The department was represented by Patricia Bentley (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on December 22, 2008. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

ISSUES

Did the department establish medical improvement that enables claimant to perform substantial gainful activity for MA-P/SDA purposes?

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 current MA-P/SDA recipient. Claimant was approved for MA-P in 2000; she was approved for SDA in September 2008.

(2) The department proposes to close claimant's MA-P/SDA based on medical improvement. SHRT issued a decision on September 23, 2008 stating that the April 2007 MRT approval was clearly made in error as claimant's primary problem at that time was ongoing cocaine and alcohol dependence. SHRT decided that claimant's medical condition is improving or is expected to improve within 12 months of date of onset, and therefore claimant is no longer eligible because she is able to work.

(3) The original basis for Claimant's MA-P and SDA approval are unknown. Claimant's unable-to-work complaints are:

(4) Claimant's vocational factors are: age—36; education—10th grade; post high school education—attended [redacted] for 2 semesters. Attended Computer engineering courses at [redacted]; work experience—janitor at adult foster care home, bartender, waitress and dental assistant.

(5) Claimant has not performed Substantial Gainful Activity (SGA) since April 2004, when she was employed as a janitor at an adult foster care home.

(6) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (SEPTEMBER 23, 2008)

> SHRT conducted a medical review of an April/2007 MRT approval based on Listing 12.04A. SHRT evaluated claimant's eligibility based on SSI Listings 12.04, 1.04 and 12.06. SHRT decided that claimant has not established a severe impairment

> which meets the department's severity and duration requirements. Under comments, SHRT stated:
>
> The MRT approval of 4/2007 was clearly made in error as claimant's primary problem at that time was ongoing cocaine and alcohol dependence. Her mental status was not significantly impaired as to preclude unskilled work at that time. Currently, her condition is non severe physically and mentally.
>
> * * *

(6) The objective medical evidence shows that claimant has a combination of mental and physical impairments which have not improved in the last 12 months.

(7) Claimant has not performed Substantial Gainful Activity (SGA) since April 2004, when she was employed as a janitor at an adult foster care facility.

(8) Claimant has the following unable-to-work complaints:

(a) Bipolar disorder;
(b) Anxiety disorder/panic attacks;
(c) Social disorder/post traumatic stress syndrome;
(d) Colitis;
(e) Back and neck dysfunction with pain;
(f) Wrist dysfunction;
(g) Right ankle dysfunction;
(h) Doesn't like being in public;
(i) Doesn't like talking to strangers.

(9) Claimant lives alone and is able to perform the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming (sometimes), laundry (son helps her) and grocery shopping. Claimant has short term memory dysfunction. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does wear a neck brace approximately 6 times a month. Claimant has not been hospitalized for treatment in 2007 or 2008.

(10) Claimant has a valid driver's license and drives an automobile approximately four times a month. Claimant is computer literate.

(11) The following medical records are persuasive:

(a) A March 20, 2007 PhD Psychological Evaluation was reviewed. The PhD Psychologist provided the following history.

* * *

Claimant dropped out of high school in 10th grade. She has not obtained her GED; however, she enrolled in [redacted] where she took general education courses for more than a year. She also took a computer engineering class at [redacted]. She has applied herself in her education and received mostly A's throughout her college career. She has worked in the past as a dental assistant for approximately 11 years. She reports losing this job as a result of her substance use and persistent and debilitating anxiety and panic attacks. She has worked most recently as a bar manager.

* * *

Claimant first attended outpatient therapy at the age of 9 or 10, due to behavioral problems in school. Much of her deviant behavior at this young age was the result of several incidents of physical and emotional abuse from her immediate family. She first recalls suffering from depressive symptoms early in her teen years. She has attempted suicide on approximately 20 occasions, with the first time at age 14.

* * *

Her previous diagnoses include bipolar disorder, depression, post traumatic stress disorder, panic disorder and borderline personality disorder.

* * *

In addition to problematic mental health problems, claimant also suffers from chronic headaches and six bulging discs in her neck and back. She experiences intermittent severe pain in these areas. She claimants that she has also been diagnosed with blood clots and a heart murmur. She reports that she may have also suffered a traumatic brain injury in response to several car accidents and violent falls. She believes that her mental capacity is declining as she suffers from significant short-term and long-term memory impairments.

* * *

The PhD psychologist provided the following DSM diagnoses:

Axis I—Bipolar II disorder (recurrent major depressive episodes with hypo manic episodes); post traumatic stress disorder; panic disorder without agoraphobia. The PhD psychologist provided an Axis V/GAF diagnosis of 40 (marked impairment).

The PhD psychologist provided the following summary:

* * *

Claimant's prognosis for therapeutic success is generally poor given the character logic nature of her problems and her diminished motivation to work or change. Establishing a therapeutic relationship is very challenging because of a serious character pathology that is present. Continued medication reviews are necessary to decrease her level of agitation and to help her sleep. Cognitive behavioral intervention focused on her depressive and anxious cogitative processes totally beneficial. She does not respond well to personal questioning and becomes outwardly emotional while bringing traumatic events from her past.

* * *

(b) A March 16, 2007 Internal Medicine Assessment was reviewed.

The internist provided the following subjective assessment: Claimant is here for a FIA examination. She is a 34-year-old white female, past medical history significant for bipolar disorder, depression, insomnia, history of some bulging discs in the LS and cervical spine.

* * *

History of alcoholism and crack cocaine use. She has been in recovery and free of any usage of either alcohol or drugs since 11/3/2006.

* * *

In January 2005 claimant had a suicide attempt and was taken to [redacted] and hospitalized for one week. In April 2004, 2005 claimant states she was involved in an auto accident. She was sent to [redacted]. She had some x-rays and a CT scans and was told that she had some bulging discs in the LS and cervical spine. The pain that she gets from it is sporadic. If she is doing any type of heavy physical exercising, she will get arthritic type pain in

the neck and lower spine. This might last for a week or two and that's it.

* * *

The internist provided the following summary:

Claimant is a 34-year-old white female who has some occasional physical complaints of lower back pain, neck pain, which comes and goes in a sporadic nature and intermittent. She exhibits no motor or sensory deficits. Her primary problem she states is of a mental nature.

* * *

(c) A January 31, 2007 narrative psychiatric evaluation was reviewed.

The M.D. psychiatrist provided the following history:

Claimant was seen today for a psychiatric assessment. She is neatly and appropriately dressed and groomed. She has poor eye contact throughout the interview. She states that she is in a "deep depression.". She complains of racing thoughts and a decrease ability to slow them down enough to get rest or sleep. She feels she is going "too fast." She states "I have too much energy." She has a longstanding psychiatric history dating back to at least age 13 when she took her first overdose. She described very clearly frequent panic attacks that caused her to stay home and isolate herself. She has social anxiety disorder. There is some evidence of compulsive behaviors and that all cans in the cupboard must be in the same direction and if they are not she is upset about that. She obsesses about suicide. She has recurrent thoughts of self harm. She has attempted suicide at least 15 times. She has had 3 serious overdoses with Tylenol derivatives. She has lacerated her wrists several times. She relates that all these attempts occurred while under the influence of drugs, especially alcohol. She has a long standing history of alcohol dependence. She states when I start drinking, I "don't stop". Her last drink was New Year's Eve 2006. She has a history of crack dependence.

Despite the complaints of depression, this patient is very anxious and agitated. She is hyper verbal. She has difficulties concentrating. There is some evidence of lose association at times.

* * *

> Diagnostic formulation:
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> This is a 34-year-old Caucasian female who is seen today for a psychiatric assessment. She complains of depression; however there is no evidence of same during the course of this interview. These symptoms are more compatible with bipolar disorder. She complains of racing thoughts, decreased ability to concentrate. Poor sleep ability and feeling like she is "Go, go, go." She has a long standing history of alcohol and crack dependence. She has attempted suicide multiple times, most recently with Tylenol derivatives. She is poor in object relations. She has a history of sexual abuse dating back to age 13 by most males involved in her life. She denies any psychotic symptomatology. She does have a long standing history of panic attacks and social anxiety disorder.
>
> * * *
>
> The psychiatrist provided the following diagnosis:
>
> Axis I—Bipolar Affective Disorder, type I, without severe psychoses; rule-out major depressive disorder, recurrent, severe with atypical features; panic disorder with agoraphobia. Post traumatic stress disorder.
>
> Axis V/GAF—38.

(12) The probative psychological/psychiatric evidence establishes an acute (non-exertional) mental condition (Bipolar II disorder; Post Traumatic Stress Disorder and Panic Disorder without agoraphobia. Claimant's medical records reveal a long standing history of panic attacks, social anxiety disorder and suicide attempts. The January 31, 2007 Mental Residual Functional Capacity Assessment (DHS-49E) shows that claimant is markedly limited in all 20 areas of mental performance. Clearly, there has been no improvement in claimant's mental impairments since her last review in 2007.

(13) The probative medical evidence does not establish significant improvement in claimant's physical impairments; back and neck dysfunction, back pain, wrist dysfunction and

right ankle dysfunction. Claimant also reports a diagnosis of colitis. The level of claimant's arthritic pain has not declined since she was last evaluated for benefits in 2007.

CONCLUSIONS OF LAW

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

> ...Medical reports should include –
>
> (1) Medical history.
>
> (2) Clinical findings (such as the results of physical or mental status examinations);
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> (3) Laboratory findings (such as blood pressure, X-rays);
>
> (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

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).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client’s symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

THE ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY

Under current MA-P/SDA policy, **the department has the burden of proof** to establish that claimant is medically able to return to work. PEM 260 and 261. Claimant's original approval was based on Bipolar Disorder and Post Traumatic Stress Disorder with back pain. Her approval was based on SSI Listing 12. 04(a). There is no psychiatric evidence to show improvement in claimant's Bipolar Disorder, Post Traumatic Stress Disorder or Anxiety Disorder. Once an individual has been determined to be disabled "for purposes of disability benefits", continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), the possibility of medical improvement and this relationship if the individual's ability to work are assessed. The review may cease and benefits may be continued, at any point, if there is substantial evidence on the record to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b).

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.994(b). The evidence of record shows that claimant is not currently performing substantial gainful activity. Her activities of daily living are marginal and she requires help with the laundry and grocery shopping. She can only do her chores for

short periods of time. Since the record does not show that claimant is working and performing substantial gainful activity, claimant is not disqualified for benefits at this step.

Second, if an individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1, Subpart P, Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.944(b). There is no evidence that claimant meets any of the SSI Listings at this time. SHRT thinks that claimant was incorrectly awarded disability benefits based on Listing 12.04(a). However, the Administrative Law Judge does not find any evidence in this record to nullify the prior MRT decision. It appears that claimant continues to meet the requirements of Listing 12.04(a).

Third, the trier of fact must determine whether or not there has been medical improvement as defined in 20 CFR 416.994(b) and 20 CFR 416.994(?).

Medical improvement is defined as any decrease in the medical severity of impairment(s) which were present at the time of the most recent favorable medical decision that claimant was disabled.

A determination that there has been a decrease in the medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with claimant's impairments. If there has been medical improvement, as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to claimant's ability to work. If there has been no decrease in the medical severity, and thus no improvement, the trier of fact moves to Step 5 in the sequential analysis.

Based on the current medical record, the Administrative Law Judge concludes that claimant has not shown a significant improvement in her mental capacities or in the physical

capacities (back and neck dysfunction with pain, wrist dysfunction and right ankle dysfunction with pain. In fact, the medical evidence of record shows that claimant's physical condition and mental condition has deteriorated since the 2007 review was performed.

Fourth, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b) apply. If none apply, claimant's disability must be found to continue. 20 CFR 416.994(b).

The Administrative Law Judge has reviewed the four exceptions in group I and concludes that none of them apply to claimant's case.

The second group of exceptions to medical improvement are found at 20 CFR 416.994(b)(4). The Administrative Law Judge has reviewed the second group of exceptions to medical improvement and finds none of them apply to claimant at this time.

Claimant testified at the hearing that she continues to experience pain and lack of function in her back, neck, wrist and right ankle. Therefore there has been no improvement in her physical condition.

Current regulations provide that severe complaints of pain, where there are objectively established medical conditions that can reasonably be expected to produce the pain, must be taken into account in determining claimant's limitations. [redacted].

After a careful review of the entire record, the Administrative Law Judge concludes that claimant's mental and physical impairments render claimant unable to perform even sedentary work. Based on the foregoing analysis, the department has failed to provide definitive clinical evidence that claimant's mental impairments (anxiety disorder, post traumatic stress disorder and bipolar disorder) have improved. Furthermore, the department has not established that

claimant's neck, back, wrist and right ankle dysfunction has improved. The department did not provide any work release documents in the record to establish that claimant's physicians now believe she is completely healed and able to return to work. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

In short, the Administrative Law Judge concludes that the department has not presented the required competent, and material substantial evidence to support a finding that claimant no longer has a severe mental or physical impairment that prevent her from performing basic work activities. 20 CFR 416.920(c).

Based on the analysis presented above, the Administrative Law Judge concludes that the department has not met its burden of proof to show medical improvement with unequivocal clinical evidence.

Therefore, claimant is, at this time, not able to return to substantial gainful activity (SGA) based on her mental and physical impairments.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established the requisite medical improvement as defined by PEM 260/261 and the applicable SSI regulations.

According, the department's decision to close claimant's MA-P/SDA based on medical improvement is, hereby, REVERSED.

SO ORDERED.

/s/
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 4, 2010

Date Mailed: May 4, 2010

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 mailing 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.

JWS/sd

cc: [redacted]