

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: 2008-9177

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 2, 2008

Van Buren 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 2, 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 divorced, 47-year-old smoker with a general equivalency education (GED) who has a sporadic, unskilled work history; she was last employed part-time for a month in 2007 providing day care services to her grandchildren (Department Exhibit #1, pgs 8, 11 and 24).

(2) On September 7, 2007, claimant applied for disability-based MA/SDA.

(3) Three days earlier, claimant reinitiated community mental health (CMH) outpatient services because she was noncompliant with her previously prescribed psychotropic medications for a year and she felt her mental health was deteriorating (Department Exhibit #1, pgs 21 and 23).

(4) Claimant voluntarily withdrew from outpatient CMH treatment in October, 2006 because she felt the services and medications were a “Big part of her success” (Department Exhibit #1, pgs 30 and 31).

(5) Claimant resides with her mother; she has a history of cocaine addiction but reports being in remission since 2005; she is also a recovering alcoholic (Department Exhibit #1, pgs 28 and 34).

(6) Initially, CMH prescribed [REDACTED] for claimant’s reported symptoms; this drug was reinitiated upon claimant’s return to treatment in September, 2007; as of claimant’s April 2, 2008 hearing date, [REDACTED] had been added (Client Exhibit A, pg 2).

(7) Four months before claimant voluntarily withdrew from treatment, her June 14, 2006 CMH progress report indicated she was doing well on her medications (Client Exhibit A, pg 124).

(8) Claimant’s diagnosis in 2006 was Adjustment Disorder with Mixed Emotional Features (Department Exhibit #1, pg 124).

(9) As of claimant’s April 2, 2008 hearing date, she was seeing a counselor twice monthly and a psychiatrist as required for standard medication reviews.

(10) Claimant's diagnosis after she returned to therapy in September, 2007 was broadened to include Disassociative Disorder and Post Traumatic Stress Disorder in January, 2008 (Client Exhibit A, pg 11).

(11) Claimant's confirmed symptoms during her ongoing CMH treatment include visual/auditory hallucinations, panic/anxiety attacks, agoraphobia, seclusiveness, paranoia, insomnia, irritability/emotional agitation, appetite irregularities, decline in memory function, loss of concentration, an extreme sense of guilt, low self esteem and psychomotor agitation (Client Exhibit A, pgs 10-19).

(12) During claimant's disability application on September 7, 2007, the interviewing caseworker noted:

Has paranoia, fear of public places and can't be around people, is afraid of the dark, will not take a shower without someone in the home, fearful of being alone, can't be near cornfields or clowns, doesn't sleep well and is restless. She is very restless and moving all the time while in my office, very nervous and sat with her arms folded on her chest rocking a lot (Department Exhibit #1, pg 9).

(13) A CMH progress note dated October 19, 2007 (the month after MA/SDA application filing), indicates claimant was experiencing her second, full blown psychosis secondary to past drug abuse in remission; her former medication dosages needed to be increased (Client Exhibit A, pg 16).

(14) Ongoing CMH services were authorized and claimant's annual psychological assessment was scheduled for August, 2008 (Client Exhibit A, pg 25).

(15) The results of this assessment were not included in the medical evidence reviewed on appeal because the hearing record was closed for additional evidence submission before the assessment was conducted.

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).

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.

The applicable federal 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 [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 need for continued psychiatric treatment at MA/SDA application on September 7, 2007 is extensively documented in the records submitted to date, as well as in the credible hearing testimony. Furthermore, while claimant's drug and alcohol use also is extensively documented, this Administrative Law Judge finds it is not material because she is convinced claimant's reported long-term remission/abstinence is credible. Furthermore, claimant credibly established marked limitations in normal social functioning and extensive maladaptive behaviors that would have prevented any success in the competitive work force during the period at issue. In fact, claimant's documented constellation of symptoms meets Listing 12.04 (A) and (B), even without consideration of the physical symptoms she reports secondary to her asthma and arthritis. Consequently, the department's denial of claimant's September 7, 2007 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 issuing a disability disallowance under the governing regulations.

Accordingly, the department's denial of claimant's September 7, 2007 MA/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 April, 2009.

(3) The department shall obtain all current treatment notes, progress reports, etc. at the time of review, including the assessment records referenced in Finding of Fact #14 and #15 above.

(4) **CLAIMANT SHOULD BE AWARE THAT HER FAILURE TO FOLLOW ALL TREATMENT RECOMMENDATIONS MAY 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 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.

MBM/db

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