

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: 2008-19176
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 7, 2008
Ingham 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 Lansing on August 7, 2008. Claimant personally appeared and testified under oath.

The department was represented by Ellen Arman (Lead Worker).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

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. The department proposes to close claimant's MA-P/SDA based on medical improvement. SHRT issued a decision on June 13, 2008 requesting additional medical evidence to determine the severity of claimant's current mental impairments. The original approval date for claimant's MA-P/SDA is unknown. The basis for claimant's disability approval apparently was claimant's combination of mental impairments (including depression, panic attacks, anxiety and Post Traumatic Stress Disorder (PTSD)).

(2) Claimant's vocational factors are: age—25; education—10th grade; post-high school education—one semester at [REDACTED]; work experience—telemarketer (did surveys over the telephone), was a grooming assistant for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when she worked part-time for a telemarketing company doing surveys.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 13, 2008):

A mental status exam in 3/2007 showed claimant appeared to be exquisitely anxious, fearful and intense. She had furtive eye contact. Her legs shook constantly. She did not exhibit evidence of illogical, bizarre or circumstantial ideation. There was no evidence of a thought disorder (page 30). Diagnosis included panic disorder, severe, with mild agoraphobia; PTSD (Post Traumatic Stress Disorder); major depressive disorder, recurrent, by history; and personality disorder (page 32).

Records indicate that claimant has a history of polysubstance abuse. In 3/2008, she reported full remission and she was noted to be drug-free for over a year (page 16). It was in 4/2008, it was noted that claimant had actually been relatively stable as far as mood and functions the past several days/weeks (page 17).

ANALYSIS:

Claimant has a history of substance abuse, but reports to being drug-free for over a year. The records from [REDACTED] appear to be missing every other page (pages 7, 9, 11, 13,

15 and 18 are missing). There is no actual current medical status exam in the file. It is possible the missing pages have the objective mental status exams. A current mental status examination was recommended.

(5) The following objective medical evidence was considered:

(a) An April 16, 2008 neuropsychological evaluation was reviewed.

The neuropsychologist provided the following history:

This 24-year-old female presents with a complex psychiatric history. She presents with symptoms of anxiety, depression, panic attacks, and describes difficulty with memory. In fact, she has difficulty recalling appointments, dates, and personal belongings. Her medical history is negative for concussions, seizures, high fevers, sleep apnea, stroke, family history of neurological conditions, but does have a history of alcohol abuse, consuming a fifth a day from age 17, and her last drink was 2 years ago. She also has been addicted to heroin, consuming "3 packs per day" but has been drug free for one year(?). She was a dancer to support her habit. She has a past record for possession of a "morphine pipe" as she describes it "years ago." She has been treated for bipolar disorder, borderline personality disorder and has 2 suicide attempts occurring approximately 3 years ago. She denies any history of psychiatric hospitalization. She has post-traumatic stress disorder associated with a rape at 17, and describes flashback nightmares, avoidance of groups, and is more "timid" as she describes it, around people since this time. She has a history of possible rape occurring while intoxicated in the past, but has no clear recollection of what occurred, only bits and pieces of a part of her experience. She has been treated at [REDACTED], and her current medications include Abilify, Klonopin, and Zoloft. Current stressors include breaking up with a boyfriend of 3 years and being homeless, sleeping on the floor of a studio apartment with others. She has diminished sleep, is fatigued, has low motivation, and is without spontaneity of affect. Current concerns and reason for neuropsychological evaluation are to rule-out a neurocognitive disorder versus psychiatric condition and to assist with the treatment and planning process and determine her capacity for employment at this time.

The PhD psychologist provided the following summary of general intellectual functioning:

This 24-year-old female obtained a [REDACTED], a performance [REDACTED], yielding a full scale [REDACTED] on the [REDACTED]. This places general intellectual functioning within the low-average range at the 23rd percentile relative to the standard population. The 22 point discrepancy between language-based and visual-spatial abilities is significant and is not a normal variant. Her suppression in immediate problem solving and visual-spatial abilities is significant and occurs only 5% of the time in the standard population. This likely reflects the effects of depression versus a neurocognitive disorder affecting right cerebral hemisphere versus a neurodevelopmental condition or non-verbal learning disability. Specific subtest score performances revealed average to superior range verbal intellectual capacities, and in fact she demonstrated superior range verbal conceptualization involving familiar information (page 91st percentile), while social comprehension (75th percentile), fund of information from past (63rd percentile), and word comprehension (63rd percentile) tested in the high average range. Her immediate memory strand for auditory digits was at the 16th percentile and concentration and working memory as needed for performing mental calculations was at the 5th percentile.

In short, this patient demonstrates well preserved visual discrimination and social comprehension functions, but has substantial limitations in processing, speed, concentration, attention, calculation, reasoning, and assembly skills which are significantly suppressed at this time.

The PhD psychologist summarized claimant's higher functioning as follows:

Abstract reasoning, problem solving, planning, organization, and cognitive flexibility functions tested as substantially impaired. This patient demonstrated large limitations in the ability to plan, in the ability to reason, plan, and problem solve with new and unfamiliar information.

In short, when planning, organization, and reasoning and problem solving activity require utilization of working memory, cognitive flexibility and the ability to formulate an independent problem solving approach, she demonstrates profound limitations.

The PhD psychologist provided the following assessment of claimant's personality/emotional status: This 24-year-old female presents with limited motivation and capabilities. She initially did not show up for the first appointment, required a phone call, and ultimately decided to come in later in the day. She has trouble with transportation and needed to catch the bus for a lengthy ride. The testing was completed in 2 sessions with patient again showing up late during the second sessions. A third session was scheduled because she responded to the [REDACTED] in such a way as to invalidate the profile. She failed to show for the third session. On the PAI, she appeared to exaggerate her limitations and had an exceedingly low Positive Impression Scale performance reflecting a high level of personal dissatisfaction. Her pattern of relating to the examiner during the testing is best described as passive and required much by way of prompting, queuing, and encouragement to complete many of the tasks which required sustained effort. She, during one of the testing sessions, was experiencing fatigue, but there was little difference in performance across the sessions. She demonstrates a high level of depressive symptomatology and anxiety including post-traumatic stress disorder symptomatology, borderline symptomatology, and limited assertiveness or capacity for resolving interpersonal conflict. Due to the exaggeration of impairment identified by the [REDACTED] [REDACTED], the current test results should be considered tentative.

The PhD psychologist provided the following summary: This 24-year-old female with longstanding history of depression, post-traumatic stress disorder symptomatology, alcohol and heroin abuse demonstrates evidence of substantial neurocognitive suppression. She demonstrates, however, limited capacity for dealing with new and complex information and making decisions in her own best interest at this time. She demonstrates substantial evidence of clinical depression, which affects the sustained attention, information processing speed, concentration, and

exaggerates what appear to be the cognitive impairments, as well as perhaps a neurodevelopmental condition.

Diagnostically, current test results and history are consistent with a dementia NOS with unknown etiology, apparent lateralized suppression in right cerebral hemisphere functions. There is also evidence of a depressed phase of perhaps bipolar disorder along with personality trait disturbance with borderline features, and post-traumatic stress symptomatology is also clearly demonstrated. For all intents and purposes, the claimant is unable to function in an independent fashion, managing or supervising her own affairs. Her interpersonal assertiveness is quite limited, and she is quite dependent on others. She places herself in situations which are unsafe.

The Ph D psychologist provided the following recommendations:

Claimant, in all likelihood, is unemployable and should be considered for long disability if she is unresponsive to a more aggressive course of treatment.

(6) The objective medical evidence (plus claimant's testimony) shows that she has been treated at the [REDACTED] on a relatively frequent basis in 2007 and 2008. She was unable to provide exact dates.

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

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);
- (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).

**ABILITY TO DO
SUBSTANTIAL GAINFUL ACTIVITY**

Under current MA-P/SDA policy, **the department has the burden of proof** to establish that claimant is now medically able to return to work. PEM 260/261.

Claimant's original approval appears to have been based on her mental impairments (depression, panic attacks, anxiety and Post-Traumatic Stress Disorder (PTSD).

Based on the April 16, 2008 neuropsychological report, claimant's mental status has not improved since she was originally approved for benefits in April 2007. Claimant continues to have difficulty with planning, organization, reasoning and problem solving activities that require use of memory, cognitive flexibility and the ability to formulate an independent problem solving approach. According to the PhD psychologist in his report, dated April 16, 2008, claimant still demonstrates profound limitations in these areas.

Therefore, claimant is not, at this time, able to return to Substantial Gainful Activity based on a combination of her mental 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 medical improvement, as required by PEM 260/261.

Accordingly, the department's decision to close claimant's MA-P/SDA is, hereby,
REVERSED.

SO ORDERED.

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

Date Signed: September 28, 2009

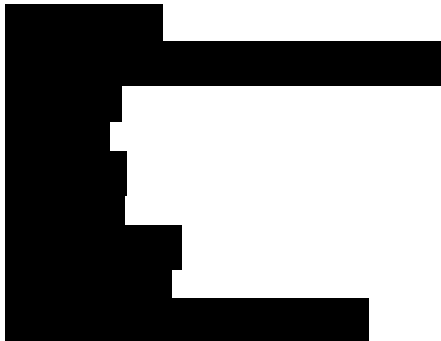
Date Mailed: September 29, 2009

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.

JWS/sd

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