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: 2008-21390
Issue No: 2009; 4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
August 26, 2008
Wayne 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 Detroit on August 26, 2008. Claimant personally appeared and testified under oath. Due to a previous commitment, claimant's attorney, [redacted], was unable to attend the hearing.

The department was represented by Renee Jones (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

Did the department correctly approve MA-P/SDA in 2005 based on claimant's mental impairment (Listing 12.04-affective disorders)?

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 former MA-P/SDA recipient, who was terminated by the

department on April 15, 2008 because the November 2005 MRT approval was clearly made in error under Listing 12.04.

(2) Claimant's vocational factors are: age--41; education--9th grade; post-high school education--GED; work experience--no work history.

(3) Claimant has not performed Substantial Gainful Activity (SGA) in the last 10 years.

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

(a) Herniated disc;
(b) Pain secondary to herniated disc;
(c) Unable to sit for long periods;
(d) Unable to stand for long periods;
(e) Bipolar disorder;
(f) Schizoaffective disorder;
(g) Explosive disorder;
(h) Takes 3 psychotropic medications.

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

> **OBJECTIVE MEDICAL EVIDENCE (March 6, 2008)**
>
> Claimant is alleging disability due to bipolar disorder. He is 41 years old and has a limited education with a history of unskilled work (a medical review of a 11/2005 MRT approval based on Listing 12.04).
>
> SHRT assessed claimant's eligibility for disability benefits as follows:
>
> MRT approval of 11/2005 was clearly made in error, as Listing 12.04 was **never** met or equaled. Claimant's primary problem appears to be drug and alcohol addiction. He could have performed unskilled work then and can perform unskilled work now.

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(6) Claimant lives with his 22-year-old son, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning (sometimes). Claimant uses a cane approximately twice a month. He does not use a walker,

wheelchair or shower stool. Claimant does not wear a brace on his neck, arms or legs. He does occasionally wear a brace on his waist.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is computer literate.

(8) The following medical/psychological records (available prior to the approval in November 2005) are persuasive:

(a) A [redacted] psychiatric evaluation was reviewed.

The psychiatrist reported the following history:

HISTORY:

Claimant is a 38-year-old male, known through [redacted] clinic, and seen at [redacted] in psychiatric outpatient follow-up and aftercare treatment since early 2003. Claimant's case recently transferred to me from [redacted] Claimant comes regularly for outpatient medication and evaluations once a month in the clinic. Claimant is presently taking Wellbutrin, Zyprexa, and Strattera. During the evaluation today, claimant admits the medications helping, but claimant said recently he started feeling paranoid with persecutory ideations. Claimant says he feels like people are watching him and somebody is following, trying to harm him. Claimant denies hearing voices. Feeling depressed. Admits to mood swings. Feeling hyperactive and hyperverbal and sleeping poorly at times. Denied any other psychiatric symptoms or problems. Eating fair. No behavioral problems.

PAST HISTORY:

Claimant denied any past history of psych hospitalization. Claimant said he was in substance abuse rehab program a few times. Claimant presently clean for the past 3 years. No substance abuse. Claimant denied any other medical problems except back pain.

PERSONAL AND FAMILY HISTORY:

Single. Lives alone on ----. Claimant stated he was in jail a few times and claimant denied any substance abuse for the past 3 years. Has poor contact with family. For details see psychosocial history.

MENTAL STATUS:

A 38-year-old black male coherent and relevant. Affect restricted. Claimant denied any hallucinations. Has paranoia and persecutory delusions. Depressed. Denied any suicidal or homicidal ideation. Mood swings, being hyperactive and hyperverbal. Claimant admits to mood swings. Denied any suicidal or homicidal ideation at this time. Appears marginally stable. Insight and judgment poor.

DSM DIAGNOSES: None.

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(b) An [redacted] psychiatric evaluation was reviewed.

The psychiatrist provided the following:

HISTORY:

This is a 38-year-old African-American male who said he has been in and out of prison for the last 15-20 years. He first went to [redacted] prison when he was 15-years-old. He started using crack cocaine and alcohol at age 15. He was last released from prison in 2001, for armed robbery. He said he was diagnosed with bipolar disorder. He has been feeling depressed. He has mood swings with highs and lows. He also has delusional thoughts that the government is watching him and following him. He stated having behavior problems during childhood. He used to get frequent detentions and suspensions in school. He was in juvenile detention many times. His sleep pattern is poor. He used to use alcohol and drugs but now he is clean. He has had problems holding a job. He appeared preoccupied. He is currently living in a homeless shelter.

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PERSONAL HISTORY:

Claimant was born and raised in Michigan. He described his childhood as bad. He had behavior problems and had running away behavior during childhood. He was in and out of juvenile since age 14. He has one sister and one brother. He dropped out of 9th grade. He is single and has one 19-year-old son. He never held a stable job. His longest job was for 3 weeks. He used to use alcohol and other drugs and now he has been clean and sober for 2 years. He is attending [redacted] meetings. He has been in and out of jail and juvenile custody.

SOCIAL FUNCTIONING:

Claimant lives in a homeless shelter. He has no friends and no contact with neighbors. He does not get along well with others. He appeared preoccupied, irritable and suspicious during the interview.

ACTIVITES:

Claimant does not go to church. He does light chores. He does not cook. In his free time, he attends Alcoholic Anonymous meetings. He does not like to watch TV.

GENERAL OBSERVATSIONS:

This is a 38-year-old male who was dropped off by a staff member at the homeless shelter. Claimant is 5'9" tall and weighs 190 pounds. His hygiene and grooming appear fair he has occasional short term memory problems. He was on time for the appointment. He is able to take care of his basic needs.

ATTITUDE AND BEHAVIOR:

Claimant has contact with reality. Claimant's self-esteem is low. Motor activity is low. Claimant has no motivation and some insight.

STREAM OF MENTAL ACTIVITY:

Claimant's speech was spontaneous and logical.

MENTAL TREND AND THOUGHT CONTENT:

Claimant admitted hearing voices at times. The voices tell him different things. He feels the government is watching him. He appears preoccupied. He has mood swings with highs and lows. He has suicidal ideation on and off. He sometimes feels like hurting others.

EMOTIONAL REACTION:

Claimant's mood was irritable and suspicious. Claimant's affect was blunted.

ORIENTATION:

Claimant was alert and oriented to time, place and person.

MEMORY:

Claimant was able to repeat 4 of 5 numbers forward and 4 of 4 numbers backward. Claimant was able to recall none of 3 objects after 3 minutes.

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INFORMATION:

When asked to name 2 large cities, claimant said, '[redacted].' When asked to name famous people, claimant said, [redacted].' When asked to name current events, claimant said, 'election.'

CALCULATIONS:

When asked to subtract serial 7's from 100 the patient stated 93, 86. Claimant said 6 times 5 equals 30 and 7 plus 5 equals 12.

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The psychiatrist provided the following diagnoses:

AXIS I--Bipolar disorder, mixed type with psychotic features; schizoaffective disorder; polysubstance abuse in partial remission.

AXIS V/GAF--35

(c) A [redacted] psychiatric evaluation was reviewed.

IDENTIFICATION AND HISTORY OF PRESENT ILLNESS:

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Claimant mentioned that when he was 18 and he was in a substance abuse program, they diagnosed him of suffering from ADHD and bipolar mood disorder and so he was referred to outpatient follow-up at that time, but never followed through; however, he started following since 2000 and initially was on Depakote and Wellbutrin. He did well, but developed a skin rash and so Depakote was discontinued. He gave a history of mood swings, hyperactivity, thoughts racing in his mind, unable to sit still associated with insomnia, and also had periods of depression and felt hopeless and helplessness associated with anxiety and nervous feelings. At present, claimant is on Zyprexa, Wellbutrin, and also on Strattera and he is still symptomatic, but he mentioned that medications are helping him.

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PAST HISTORY:

Claimant was never psychiatrically hospitalized. He was followed as an outpatient since 2003. He has a history of hyperactivity, but according to him nobody diagnosed him when he was in the school, but they used to make comments that he cannot focus, he still cannot sit and he cannot concentrate, also he has a tendency to get upset easily. Claimant mentioned that he started abusing drugs since he was 18 years old, mainly cocaine he was using at that time. There is family history of substance abuse. He lives independently. Denied any physical problems and he complained of GED. He was in different drug rehabilitation programs in the past. He lives independently as mentioned earlier. Patient also gave a history of criminal record. He was in and out of prison or jail several times mainly for carrying drugs, etc. He was also once involved in armed robbery.

MENTAL STATUS EXAMINATION:

Claimant is alert and he is fairly dressed and groomed. His speech is goal-directed. He is oriented. His mood is stable. He still has periods of depression, sometimes feels hyper, but he mentioned that medications are helping him. He denied hearing voices. He denied any delusions. He denied any thoughts about hurting himself or hurting anybody. He denied insomnia and appetite problems. His memory is fair.

His general knowledge is fair and his insight and judgment are fair.

DIAGNOSES:

AXIS I-- (1) Bipolar affective disorder, mixed type;
(2) History of alcohol and cocaine abuse in remission;

AXIS V/GAF--60

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(d) A Mental Residual Functional Capacity Assessment (FIA-39E) was reviewed. It shows three abilities under the markedly limited category:

(a) The ability to understand and remember;
(b) The ability to carry out simple instructions;
(c) The ability to set realistic goals and plans.

The other abilities were considered moderately limited.

(e) A February 3, 2005 Medical Examination Report (FIA-49) was reviewed.

The physician reported a bulging disc. He states that claimant is able to lift 6 to 10 pounds occasionally. He is able to sit less than one hour, walk less than one hour, stand less than one hour. He is able to use his hands/arms for simple grasping and fine manipulating. He was able to use his feet/legs for normal activities. The physician reports no mental limitations.

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The medical evidence does show evidence of a depressive syndrome: (c) Sleep disturbance; (d) psychomotor agitation or retardation; (g) difficulty concentrating or thinking; hallucinations, delusions or paranoid thinking. The medical evidence does show a manic syndrome characterized as follows: (a) hyperactivity; (c) paranoid ideas; (h) hallucinations, delusions or paranoid thinking. However, under Listing 12.04 the following elements were not established: (1) Marked restriction of activities of daily living,

marked difficulties in maintaining social functioning, deficiencies in concentration, persistence or pace and repeated episodes of deterioration.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required periods of time. While it is true that claimant's physician reports that he has a bulging disc, the physician does not state that claimant is totally unable to perform any work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied his application; claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to MA-P/SDA based on the impairments listed in paragraph #5, above.

DEPARTMENT'S POSITION

The department thinks that the MRT approval of 11/2005 was clearly made in error and that Listing 12.04 was not met or equaled in November 2005.

LEGAL BASE

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).

In 2005, the department evaluated disability based on mental impairments via Listing 12.04. Claimant does meet any of the relevant SSI Listings. See DHS-282, dated June 24, 2008.

Claimant has the burden of proof to show by a preponderance of the medical/psychiatric evidence in the record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes. PEM 260/261. "Disability" is defined by MA-P/SDA standard as a legal term which is individually determined by a consideration of all factors in each particular case.

STEP 1

The issue at Step 1 is whether claimant is performing Substantial Gainful Activity (SGA). If claimant is working and is earning substantial income, he is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working, or otherwise performing Substantial Gainful Activity (SGA), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The medical/vocational evidence of record shows no work history.

Since claimant is not currently performing SGA, he meets the Step 1 disability test.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit his physical/mental ability to do basic work activities, he does not meet the Step 2 criteria.

The medical/psychiatric evidence of record does not establish an impairment which meets the severity and duration test.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant alleges disability based on Listing 12.04.

Claimant does not meet the elements of 12.04.

STEP 4

The issue at Step 4 is whether claimant is able to do his previous work. Claimant has no work history.

The department thinks that claimant is able to perform unskilled work.

The medical evidence of record shows that claimant's mental impairments do not preclude him from performing unskilled sedentary work.

Since claimant is able to perform routine unskilled work, he does not meet the Step 4 disability test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/psychological evidence of record that his mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on bipolar and schizoaffective disorder. The discussion about discrepancies is that while claimant meets several aspects of Listing 12.04, he does not meet Paragraph C and Paragraph D.

Second, claimant alleges disability based on a bulging disc. The only evidence to support the claimant's bulging disc is the medical examination report date 3/3/2005. Although the physician states that claimant is totally unable to perform any work, the MSO opinion will not be given controlling weight because it is not supported by the great weight of the medical evidence in the record.

During the hearing, claimant testified that he had back problems. The evidence of pain, alone, is insufficient to establish disability per MA-P/SDA purposes.

The Administrative Law Judge concludes the claimant's testimony about his pain is credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on his bipolar disorder, his schizoaffective disorder, and his back pain. Claimant currently performs many activities of daily living and has an active social life with his son. Claimant was able to represent himself confidently at the hearing. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes

claimant is able to perform unskilled sedentary work (SGA). In this capacity, he is able to work as a ticket taker for a theater, as a parking lot attendant and as a greeter for [redacted].

The department incorrectly approved claimant for MA-P/SDA based on Listing 12.04 in November 2005.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant was improperly approved for MA-P/SDA under Listing 12.04 in 2005.

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

SO ORDERED.

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

Date Signed: January 5, 2010

Date Mailed: January 6, 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/kgw

cc: [redacted]