

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 2008-4741
Issue No.: 2009, 4031
Case No.: ██████████
Load No.: ██████████
Hearing Date:
February 6, 2008
Wayne County DHS (57)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane for Judith Ellison

HEARING DECISION

The hearing in this matter was conducted by Administrative Law Judge Judith Ralston Ellison 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 February 6, 2008. The Claimant appeared and testified. ██████████ represented the Department.

Judge Judith Ralston Ellison left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of all evidence in the record.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance (MA-P), and State Disability (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. On August 7, 2007, the Claimant submitted an application seeking MA-P, and SDA.

2. On September 17, 2007, MRT denied the Claimant's MA-P and SDA based upon a lack of disability as defined in those programs.
3. On September 20, 2007, the Department sent the Claimant an eligibility notice informing the Claimant that her MA-P and SDA benefits were denied.
4. On September 25, 2007, the Claimant submitted a request for a hearing.
5. On January 9, 2008, the State Hearing Review Team (SHRT) determined the Claimant was not disabled based upon lack of significant limitation to the Claimant's ability to perform a wide range of unskilled work.
6. The Claimant's alleged physical disabling impairments are due to circulation problems including type I diabetes, neuropathy and hypertension.
7. On [REDACTED], a neurological exam was performed at the direction of Judge Ellison and a Psychiatric/Psychological examination was completed.
8. The Claimant evidences a GAF score of 46 which indicates serious symptoms or serious impairment in one of the following: social, occupational or school functioning and was diagnosed as bi-polar.
9. The Claimant's impairment(s) have lasted or are expected to last, for a period of more than 12 months.
10. At the time of hearing, the Claimant was 45 years old with a [REDACTED] birth date; was 5' 8" and weighed 187 pounds.
11. The Claimant completed eight (8) years of school, can read on a limited basis and is capable of doing basic math.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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 (formerly known as the Family Independence Agency) 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).

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). 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 make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a

physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four.

20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in approximately 1995. The Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In this case, the Claimant has presented medical/mental evidence establishing that she does have some physical/psychological limitations affecting her ability to perform basic work activities such as carrying out instructions, maintaining attention and concentration, sustaining a routine without supervision, ability to work in coordination with or proximity to others, and ability to interact appropriately with the general public.

Ultimately, the medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. I find the Claimant has alleged psychological disabling impairments.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

112.04 *Mood Disorders*: Characterized by a disturbance of mood (referring to a prolonged emotion that colors the whole psychic life, generally involving either depression or elation), accompanied by a full or partial manic or depressive syndrome.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Major depressive syndrome, characterized by at least five of the following, which must include either depressed or irritable mood or markedly diminished interest or pleasure:
 - a. Depressed or irritable mood; or
 - b. Markedly diminished interest or pleasure in almost all activities; or
 - c. Appetite or weight increase or decrease, or failure to make expected weight gains; or
 - d. Sleep disturbance; or
 - e. Psychomotor agitation or retardation; or
 - f. Fatigue or loss of energy; or
 - g. Feelings of worthlessness or guilt; or
 - h. Difficulty thinking or concentrating; or
 - i. Suicidal thoughts or acts; or
 - j. Hallucinations, delusions, or paranoid thinking;

OR

2. Manic syndrome, characterized by elevated, expansive, or irritable mood, and at least three of the following:
 - a. Increased activity or psychomotor agitation; or
 - b. Increased talkativeness or pressure of speech; or
 - c. Flight of ideas or subjectively experienced racing thoughts; or
 - d. Inflated self-esteem or grandiosity; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high potential of painful consequences which are not recognized; or
 - h. Hallucinations, delusions, or paranoid thinking;

OR

3. The full symptomatic picture of both manic and depressive syndromes (and currently or most recently characterized by the full or partial symptomatic picture of either or both syndromes);

Here, the claimant has been diagnosed as bipolar. Further, submitted DHS-49 E lists the claimant as being “moderately limited” in seven out of twenty categories and “markedly limited” in eleven out of twenty categories. The objective medical records do support a finding of disabled under this Listing.

In consideration of the Claimant’s testimony, medical records, and current limitations, it is found that the Claimant is not able to perform “other work” as decided by the State Hearing Review Team.

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. PEM 261, p. 1 Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. PEM 261, pp 1 – 2

In this case, there is sufficient evidence to support a finding that the Claimant’s impairment has disabled her under the SSI disability standards. Accordingly, it is found that the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant is disabled for purposes of the Medical Assistance program and the State Disability Assistance program. The Department’s determination is REVERSED.

/s/

Michael J. Bennane for
Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 09/02/09

Date Mailed: 09/03/09

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 the Circuit 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.

MJB/jlg

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