

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: 2009-14767
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2009
Grand Traverse 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 May 13, 2009. Claimant and his [REDACTED] case manager 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 single, 21-year-old home schooled high school graduate who smokes approximately one pack of cigarettes per day; he has resided with his parents his entire life (Department Exhibit #1, pg 270).

(2) Claimant had his first psychotic break with reality at age 18, when he was involuntarily hospitalized between August 26, 2006 and September 1, 2006 in [REDACTED], while on his way to [REDACTED] to start a happier new life (Department Exhibit #1, pgs 9-11 and 71).

(3) By September, 2006, claimant was back home and had started treatment at [REDACTED] (Department Exhibit #1, pg 88).

(4) Claimant was diagnosed with Bipolar Disorder with a psychotic symptom overlay and processed on a variety of medication combinations until a [REDACTED] combination was initiated in 2007 (Department Exhibit #1, pg 236).

(5) Claimant voluntarily reduced his psychiatrist's dosage of [REDACTED], as verified by an August 17, 2007 psychiatric progress report (i. e., medication noncompliance) (Department Exhibit #1, pg 104).

(6) At that time, claimant's psychiatrist talked to claimant about taking [REDACTED] in combination with [REDACTED] to prevent a common side-effect, tardive dyskinesia (Department Exhibit #1, pgs 104 and 137).

(7) Previous medication noncompliance episodes in February and April, 2007 are also documented (Department Exhibit #1, pgs 234 and 236) (See also Finding of Fact #5 above).

(8) Claimant began his unskilled work history as a farmhand; after that, he worked briefly at [REDACTED] as a cart pusher but got fired for an alcohol-related rule infraction (Department Exhibit #1, pgs 120 and 247).

(9) Claimant reported at hearing he worked on the loading dock at [REDACTED] for the 2008 Christmas season; he has not been employed since.

(10) Claimant has a valid driver's license and access to a roadworthy vehicle; he is right hand dominant.

(11) A psychiatric progress report dated September 27, 2007 states in relevant part:

[Claimant], unfortunately is not responding to [his] low dose of [redacted] and so I think we have to be more aggressive in increasing the dose. For that reason, I'm going to have him go to [redacted] for six days and then [redacted] twice a day. It is fairly clear that [claimant] needs the higher dose to control his symptoms. I'm hoping [claimant] will follow through with this recommendation. He does have a history of being somewhat resistant to taking medications. I will see [claimant] back in early October (Department Exhibit #1, pg 239)(See also Finding of Fact #5 and #7 above).

(12) Claimant's psychiatrist's records indicate claimant had a second voluntary psychiatric hospitalization beginning on October 4, 2007 (10/4/07-10/12/07)(Department Exhibit #1, pgs 240 and 241).

(13) Two months after this hospitalization claimant's psychiatrist's progress report conclusions state:

[Claimant] is not reporting any significant psychosis. No evidence of any delusions. He denies any regular alcohol use. He said he had some approximately 1 month ago. He stopped taking his [redacted] and his [redacted] approximately 2 months ago as he was not taking them consistently and they thought they would try without the medication. They have noticed no deterioration since that occurred. There is some evidence of tardive dyskinesia. It appears to be very mild. Some of the symptoms that they describe sound more like extra pyramidal side effects, so I will monitor that. I did talk to [claimant] about lowering the [redacted] dose, but he is hesitant to do that. He says that the [redacted] is very helpful to help him sleep. What I have encouraged him to do is consider trying [redacted] [redacted]. one at nighttime. If that helps him sleep, then at the next appointment, we could possibly lower his [redacted] dose down and use the [redacted] as a sleep aid. I did review with him side effects associated with [redacted]. I had him review the information for the medication and had him sign a consent form. I will see him back in 3 months. At that time, again, I may consider reducing the [redacted] (Department Exhibit #1, pg 247).

(14) This report also notes claimant's weight was 237 pounds, up 40 pounds since claimant's last visit four months earlier; this gain was attributed to the fact claimant had a new girlfriend who's mother cooks a lot (Department Exhibit #1, pg 247).

(15) Claimant has a supportive family; he enjoys hanging out with friends, going to movies, playing the guitar, playing X-box and going out to eat (Department Exhibit #1, pg 270).

(16) At claimant's disability disallowance hearing on May 13, 2009, claimant said he is still being counseled once monthly at [REDACTED] as an outpatient.

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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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).

...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).

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).

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...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).

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).

...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).

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).

...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).

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).

The psychiatric, psychological and psychosocial evidence of record establishes claimant has a Bipolar Diagnosis which is highly responsive to his current medications, as long as he maintains compliance with them. Likewise, claimant is fully independent in all activities of daily living. He is capable of all self cares, driving independently, engaging in multiple hobbies, and developing/maintaining satisfying interpersonal relationships with male and female friends. Furthermore, claimant has had only two brief psychiatric hospitalizations since August, 2006, and both were most likely the result of no, or inadequate dosages of psychiatric medications (See Finding of Fact #2-#4 and #11-#12 above). As for claimant's tardive dyskinesia, as late as December, 2008, those symptoms were mild, and thus, they would not present any severe difficulties in the unskilled employment setting. Consequently, the department's denial of claimant's November 5, 2008 MA/SDA application must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied claimant's disputed application, based on a finding that he lacks a legally disabling condition.

Accordingly, the department's action is AFFIRMED.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 21, 2009

Date Mailed: May 26, 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.

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