

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.: 2009-16031
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 4, 2009
Wayne County DHS (55)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Hamtramck, Michigan on Thursday, June 4, 2009. The Claimant appeared and testified along with [REDACTED] and [REDACTED]. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

On the record, the Claimant waived the time period for issuing a decision in order to allow for the submission of additional medical documentation. The medical documentation was received, reviewed, and entered in to the record as Claimant Exhibits A, B, C, and D. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) program?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P benefits on July 28, 2008.
2. On August 7, 2008, the Medical Review Team (“MRT”) deferred the disability determination requesting a psychiatric evaluation. (Exhibit 1, p. 3)
3. On August 28, 2008, the Claimant attended the psychiatric examination. (Exhibit 1, pp. 5 – 9)
4. On September 24, 2008, the MRT determined that the Claimant was not disabled finding the Claimant’s impairment lacked duration. (Exhibit 1, pp. 3, 4)
5. On October 8, 2008, the Department sent an eligibility notice to the Claimant informing him that he was found not disabled. (Exhibit 1, p. 1)
6. On December 23, 2008, the Department received the Claimant’s timely written request for hearing.
7. On April 2, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
8. The Claimant’s alleged physical disabling impairments are due to hypertension and tachycardia.
9. The Claimant’s alleged mental impairment(s) are due to anxiety, depression, and paranoia.
10. At the time of hearing, the Claimant was 47 years old with a [REDACTED] birth date; was 5’9” in height; and weighed approximately 153 pounds.

11. The Claimant is a high school graduate with some vocational training and an employment history as an electrical handyman.
12. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period fo 12 months or longer.

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").

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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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 416.927

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) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional

limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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 therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. 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 non-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 the present case, the Claimant alleges physical and mental disability on the hypertension, tachycardia, depression, anxiety, and paranoia.

On [REDACTED], the Claimant was admitted to the hospital with complaints of stomach pain. The mental status examination documented psychosis with a Global Assessment Functioning ("GAF") of 50. The Claimant's medication non-compliance was noted.

On [REDACTED], the Claimant presented to the hospital with complaints of anxiety and increasing paranoia. The Claimant was transferred to the psychiatric unit where, due to the Claimant's age and comorbidities, the prognosis was guarded. The Claimant was discharged on

■■■■ with the diagnoses of anxiety/paranoia, hypertension, sinus tachycardia, psychosis, hyperglycemia, glucosuria, and probable diabetes mellitus.

On ■■■■, the Claimant attended a psychiatric evaluation. No major mood and/or thought disorder was found. The Claimant's GAF was 70.

On ■■■■, the Claimant presented to the emergency room with complaints of not sleeping well and depression. The Claimant's prescriptions were refilled and the Claimant was instructed to follow-up with his psychiatrist.

On ■■■■, the Claimant presented to the emergency room with complaints of nervousness and insomnia. The Claimant was diagnosed with major depression and transferred to the psychiatric unit. The Claimant was depressed, isolative, withdrawn, with feelings of hopelessness/helplessness and difficulties focusing/concentrating, and was irritable, angry, upset, and agitated. The Claimant was prescribed Ambilify. The Claimant was discharged on ■■■■ with a guarded prognosis.

On ■■■■, a Psychiatric Examination Report was completed on behalf of the Claimant. The Claimant was diagnosed as being paranoid with a Global Assessment Functioning ("GAF") of 45.

On this same date, ■■■■, a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in his ability to carry out detailed instructions; maintain attention/concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; complete a normal workday; accept instructions and respond appropriately to criticisms from supervisors; get along with coworkers or peers without distracting them or exhibiting behavioral extremes; respond appropriately to change in the work setting; and set

realistic goals or make plans independently of others. The Claimant was moderately limited in the remaining 11 of 20 categories.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. 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. Further, the impairments have lasted continuously for twelve months; 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. The Claimant has alleged physical and mental disabling impairments due to hypertension, tachycardia, depression, anxiety, and paranoia.

Listing 4.00 defines cardiovascular impairment in part, as follows:

. . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular impairment results from one or more of four consequences of heart disease:

- (i) Chronic heart failure or ventricular dysfunction.
- (ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
- (iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
- (iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts. Cardiomyopathy is evaluated under 4.02, 4.04, 4.05 or 11.04 depending on its effects on the individual. 4.00H3

In the record presented, the Claimant medical records document hypertension however the record is devoid, however, of any end organ damage. Ultimately, the Claimant's medical record does not support a finding of disabled based on a listed impairment within 4.00. 20 CFR 416.920(a)(4)(iii) According to the medical evidence alone, the Claimant's physical impairment(s) do not meet or equal the requirements within Listing 4.00 thus he cannot be found to be disabled for purposes of the Medical Assistance program.

The Claimant asserts mental disabling impairments due to depression, anxiety, and paranoia. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least

12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B 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). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The severity requirement is measured according to the functional limitations imposed by the medically determinable mental impairment. 12.00C Functional limitations are assessed in consideration of an individual's activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *Id.*

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning and are defined in Listing 12.03 The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
1. Delusions or hallucinations; or
 2. Catatonic or other grossly disorganized behavior; or;
 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

- a. Blunt Affect; or
- b. Flat Affect; or
- c. Inappropriate affect;

or

4. Emotional withdrawal and/or isolation;

AND

B. Resulting in a least two of the following:

1. Marked restriction of activities of dialing living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended durations

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or changed in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders are met when the requirements of both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractability; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions, or paranoid thinking; or
3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

AND

B. Resulting in at least two of the following:

1. Marked restriction on activities of daily living; or
2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Listing 12.06 discusses anxiety-related disorders where anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms. The required level of severity for these disorders are met when the requirements of both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

a. Motor tension; or

b. Autonomic hyperactivity; or

c. Apprehensive expectation; or

d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

When an individual has a medically determinable impairment that is not listed consideration of whether the impairment is the medical equivalent to a listing is required. 20 CFR 416.926 When one or more findings specified in a listing is not as severe as specified in a listing, the impairment is medically equivalent if other findings related to the impairment are at least of equal medical significance. 20 CFR 416.926(b)(1) Further, the combination of impairments may be considered in determining medical equivalence. 20 CFR 416.926(b)(3)

In this case, the objective findings establish that the Claimant suffers from depression, anxiety, and paranoia. The Claimant's GAF was 50 in April 2008, 70 in August 2008, and 45 in February 2009. The Claimant was found markedly limited in 9 of the 20 factors on the Mental Residual Functional Capacity Assessment (completed by his treating psychiatrist) and moderately limited in the remainder categories. The Claimant lives with his mother in a structured environment and is compliant with his medication. The Claimant had two psychiatric hospitalizations and his psychiatrist's most recent diagnosis is paranoid. As previously stated, the Claimant's GAF is 45 which means serious symptoms OR any serious impairment in social, occupational, or school functioning. Ultimately, it is found that the Claimant's mental impairment(s) meet, or is the equivalent thereof, a Listed impairment within 12.00 as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the July 28, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.
3. The Department shall supplement for any lost benefits the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in January 2011 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 1/19/2010

Date Mailed: 1/19/2010

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 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.

CMM/jlg

cc:

