

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: 2009-18418

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 30, 2009

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 June 30, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retro MA?

FINDINGS OF FACT

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

(1) On November 25, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On December 18, 2008, the Medical Review Team denied claimant's MA application stating her impairment lacks duration of 12 months per 20 CFR 416.909, but approved SDA stating that physical or mental impairment prevents employment for 90 days or more. An SDA review for requested for April, 2009.

(3) On December 22, 2008, the department caseworker sent claimant notice that her MA application was denied.

(4) On March 2, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On April 29, 2009, the State Hearing Review Team denied claimant's MA and retro MA application stating impairment was non-severe per 20 CFR 416.920 (c), and that Drug Alcohol Use Material per 20 CFR 416.435.

(6) Claimant is a 26 year-old woman whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 120 pounds. Claimant has a high school diploma and 2 semesters of college, and can read and write, but states she has a hard time with math. Claimant stated she had been in special education classes for years due to a learning disability.

(7) Claimant is not currently employed and last worked in 2005 at a large grocery store in the bottle room and handling groceries. Claimant had this job for 1 ½ years until she was fired due to having panic attacks and many absences. Claimant has also been a waitress at a bar, job she quit, and worked at Goodwill Industries as a pricer and tagger through a special program with Michigan Works that lasted for 6 months.

(8) Claimant lives with her parents, does not drive and never had a driver's license as she is scared of driving, smokes less than a pack of cigarettes per day, does not drink, and has used marijuana in the past but claims she does not any more.

(9) Claimant alleges as disabling impairments bipolar disorder she has had for years since being diagnosed in 6th grade, and for which she has been hospitalized 5-6 times, last time being last summer for a week and a half. Claimant alleges no physical impairments.

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).

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 does 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).

At Step 1, claimant is not engaged in substantial gainful activity and testified that she has not worked since year 2005. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for duration of at least 12 months.

The objective medical evidence on the record includes a Touchstone Innovare' Progress Note of [REDACTED], that cites the claimant as saying she does not need case management services right now as she is taking her medication and it is working okay. Clinician states he informed the claimant of her court order treatment status and explained to her that she is on a 60/90 day treatment order. Claimant then agreed to make the best out of the situation, will come in for monthly Case Manager contacts to accommodate court order, but reported continued plan

to work with private psychiatrist. Claimant was well groomed, appeared relaxed, her mood and affect were appropriate, and she reported no current serious stresses.

On [REDACTED], claimant failed to show up for a scheduled psychiatric evaluation. On [REDACTED], a repeated call was made to claimant's home, she was not in, but her mother states she was concerned that the claimant was starting to appear manic again, stopped taking some of her medications and moved out about a week ago.

On [REDACTED], claimant again did not show or call for scheduled Case Manager contact. Claimant's house was called and her mother answered and informed that the claimant was out all night and did not get in until around 11:00 a.m. Claimant's mother described her as violent and abusive at times. Claimant was awakened for the phone call, concerns about her poor investment in following her treatment plan were shared with her, and she was reminded that she is on an order and cautioned that she was at risk of going back into the hospital. Claimant's appointment was rescheduled for [REDACTED]

Claimant kept her [REDACTED], appointment and reported multiple stresses including problems at home, conflicts with her mother, no benefits or financial resources other than help she gets from her parents. Claimant was encouraged to appeal SSI denial and apply for SDA, and a new doctor appointment for initial psychiatric evaluation was scheduled for [REDACTED]

Claimant kept the appointment on [REDACTED]. Psychiatric Evaluation of this date states that the claimant was hospitalized in Forest View and then referred for case management to [REDACTED]. Claimant was referred in 2003 also but never followed up on a consistent basis. Claimant is adopted, has a history of stolen credit cards, spending \$2,000 in a manic episode, and according to her mother took a check and wrote it out for \$400. No

charges were filed. Claimant is not able to hold jobs and overall is not functioning according to the family reports. Claimant denies any acute sign of psychosis but she is struggling at this time with minimal insight and doesn't remember a lot of things or chooses not to. According to the reports from Forest View, claimant has been hospitalized multiple times throughout her teen years and into adulthood, and tried on various medications, but according to her mother did not take them as the bottles were still full.

Claimant reported a history of drug use and stated she had done everything except heroin, but at that point she was on marijuana only. Mental status examination was characterized by an individual who is kind of defensive, claimant was not very spontaneous and stated she does not remember a lot of things. Claimant had episodes of mood swings, she is oriented, generalized knowledge is good; she is quite dysphoric and defensive with minimal insight, and denied auditory hallucinations or feelings of persecution. Diagnosis is that of bipolar disorder, mixed. Treatment plan was to adjust claimant's medications because she was complaining of tremors due to being on Wellbutrin. Claimant was on a court order, was told she needs to start opening up, start trusting the treatment team and controls the marijuana use and the impulsivity.

On [REDACTED] [REDACTED] received a faxed note from claimant's private psychiatrist confirming he will continue to follow her psychotropic medications, as per her request. Claimant was on Geodon, Wellbutrin, Haldol and Ativan.

On [REDACTED] claimant's mother called reporting that claimant has been smoking marijuana in their house and wanted to know what could be done to give her housing as she does not want the claimant living there anymore. On [REDACTED], claimant responded to a phone call saying she has been sick and would call her Case Manager when she was feeling better.

On [REDACTED] claimant was admitted to [REDACTED] for a kidney infection. Hospital staff informed that claimant's parents said she could not return to their home if she does not want to follow the rules, and claimant stated she does not want to follow the rules. On [REDACTED], claimant was discharging from the hospital and her parents would let her stay with them over the weekend until she could apply for housing and other benefits. On [REDACTED] claimant was still living with her parents. On [REDACTED], claimant reported taking her medications and continuing to see an outside Psychiatrist while living with her parents.

Psychosocial Assessment of [REDACTED] indicates per past reports, claimant has complained about feeling miserable, horrible, feeling like she is in hell and doesn't want to live. Claimant was seeing a psychiatrist at age 10, and has been on medications since that time. Claimant reported that stress brings on symptoms. Claimant is not functioning overall according to the family reports. Claimant denied any acute sign of psychosis but is struggling with minimal insight and doesn't remember a lot of things or chooses not to. It is noted that claimant came to Touchstone on a Court Order which has now expired, but that she continues to want assistance finding housing at some point and with getting benefits. Claimant would also benefit from education on her illness.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Therefore, this Administrative Law Judge finds that claimant has met her evidentiary burden of proof at Step 2.

The analysis proceeds to Step 3, where 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. This Administrative Law Judge finds that the claimant's medical record will support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment, that for Affective Disorders, Section 12.04, Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). No further analysis is needed.

The claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled, and that such impairments have lasted 12 months or more. The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA and retroactive MA application.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed November 25, 2008, MA application and grant her any such benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).
2. Notify the claimant in writing of this determination.

3. Review claimant's continued eligibility in September, 2010, at which time claimant is to provide updated records of all psychological/psychiatric treatment she has engaged in, including substance abuse evaluation.

4. Claimant is advised that she must follow all prescribed medical treatment.

SO ORDERED.

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 1, 2009

Date Mailed: September 9, 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 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.

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