

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: 2009-22456

Issue No: 2009

Case No: ██████████

Load No: ██████████

Hearing Date:

August 19, 2009

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by telephone hearing on August 19, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on April 15, 2009. At the hearing, on behalf of Claimant, ██████████, Court appointed guardian and attorney at law was present along with his legal assistant, ██████████. Pamela Mack, ES appeared on behalf of the Department.







ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") 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. Claimant applied for MA as of December 30, 2008.
2. Claimant is 5'10" tall and weighs 205 pounds.
3. Claimant is 48 years of age.

4. Claimant's impairments have been medically diagnosed as bipolar disorder, severe paranoia, fearful of being in public, anxiety disorder, and schizoaffective disorder.
5. Claimant's mental symptoms are depression, paranoia, intense fear of being with other people, ideas of reference and feelings of low self-esteem, hyperactivity and racing thoughts, frequent ideas of reference (convinced that other people are talking about him and plotting things against him that are not very nice), suicidal thoughts and suicidal attempts.
6. Claimant has had the following hospitalizations:
 -  - cut his wrist.
 -  - tried to jump out of car in front of truck.
7. Claimant is currently still treating with . He lives in a 3/4 group home, and participates in an adult day program. He is considered a flight risk.
8. Claimant takes the following prescriptions:
 - a) Celexa
 - b) Seoquel
 - c) Tegretol
 - d) Quozleril - gained weight and trouble sleeping.
 - e) Prozac
 - f) Priolysel
 - g) Multivitamin
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a 12th grade education.
11. Claimant is able to read/write/perform basic math skills.
12. Claimant has not worked since at least February of 2008 when Claimant last worked at the , in Birmingham as a waiter. That employment lasted for one month in 2006. Claimant worked at  for two months in 2004. He was also a waiter at  for three months 2001.
13. Claimant has prior employment experience as house painter (1990-1992) (lifting up to 50 lbs., climbing, bending, stooping, walking 6 hrs/day), and selling retail clothing (1977-1989).
14. The Department denied Claimant's request for MA benefits on 3/18/09.

15. Medical records reviewed are as follows, in part:

 – Psychiatric Hospital Admission (Exhibit 2)

Pt slit left wrist with a knife and swears he feels helpless and hopeless, nothing to live for and had it out reportedly very slow to respond, guarded, very depressed. Extensive history or several psychiatric hospitalizations with severe manic behavior, disruptive, agitated, history of drinking. Discharged to due to alcohol abuse.

DX: Bipolar disorder, schizoaffective disorder.

GAF: 40

 – Psychiatric Hospital Admission (Exhibit 4)

Referral from – Mother completed a petition after reporting patient nearly jumped out of her care on the way here to be hit by a truck. Patient is extremely paranoia, manic, hyperactive, labile, loose and rambling, evasive, tearful and guarded.

DX: Bipolar disorder, schizoaffective disorder

 Psychological Report (Exhibit 3)

Client is presenting residing in a boarding house in accord with treatment through . Prior to this arrangement he was in a group home. He has been under this type of circumstance off and on for the past six years.

COMPLAINTS AND SYMPTOMS: depression, paranoia, intense fear of being with other people, ideas of reference, and feelings of low self-esteem. Occasionally, he gets somewhat hyperactive, has racing thoughts.

DIAGNOSES: Bipolar Disorder, Mixed Personality Disorder, elements of Anxiety Disorder, elements of Conduct Disorder. Moderate to severe. Client has been unable to maintain employment. He has been unable to maintain long term social relationships.

GAF: 50

Client cannot manage his own funds dues to judgmental difficulties

 Medical Source Statement

MENTAL RESIDUAL FUNCATION CAPACITY

ASSESSMENT: Markedly limited as follows:

1. Understand and remember complex instructions.
2. The ability to carry out complex instructions;
3. The ability to make judgments on complex work-related decisions

“His depression, his feelings of anxiety, his racing thoughts and his feelings of fear and paranoia limit him even in the performance of simple tasks, but limit him far more severely in the performance of complex tasks.”

“Client can function adequately but only for short periods of time – he lacks long term stability – his illness is not really under total control.”

Admission

Patient’s mother completed a petition for hospitalization with observed shakiness, after patient attempted to jump out of his vehicle on the way to [REDACTED]. She reported patient has been repeating suicidal ideation with a plan to stab his neck or wrists over the weekend. Per his Mother, patient was asked to leave the ¾ hours due to “incontinence”. Patient is displaying paranoia, mania, and hyperactivity. He is labile, loose and rambling, evasive, guarded, unkempt.

Annual Psychiatric Assessment

His last hospitalization was about a month ago and he reports that he was hospitalized for panic attacks. He did report that he experiences paranoid delusional ideation in that he believes that other people are always talking about him behind his back.

Current GAF: 39

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 400.1 *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).

A. MA Application Date

In the subject hearing, Claimant's authorized representatives testified that Claimant originally filed for MA-P benefits September 16, 2008. Unfortunately, it is unclear whether the Department ever received that application as Claimant's representative did not have a date stamped copy that the application was received. The representative provided a billing sheet showing internal office notes that an application was filed as well as phone calls that were made to the Department to follow up on the application. (Exhibit 5). However, there are no notes or emails showing communication that was addressed to the Department. Accordingly, the undersigned finds that there is insufficient evidence to conclude that the Department received Claimant's 9/16/08 application and the following decision will pertain only to the 12/30/08 application.

B. Disability

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

. . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, client is not currently working. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of ongoing bipolar disorder, severe paranoia, anxiety disorder and schizoaffective disorder that have caused him to make attempts on his life and undergo psychiatric hospitalization. The medical evidence has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

However, the medical records also establish alcohol abuse. 20 CFR 416.935 requires a determination of whether drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.

- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

Claimant has history of alcohol addiction. However, Claimant's mental diagnoses remain even when he is not drinking. Since the limitations from Claimant's psychiatric disorders remain disabling, the alcohol addiction is not a contributing factor material to a determination of disability. Therefore, it is necessary to continue to evaluate the Claimant's impairments under step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record supports a finding that the Claimant's mental impairments are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). In this matter, the medical records establish a diagnosis of bipolar disorder and schizoaffective disorder. Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 12.00, *Mental Disorders*.

After reviewing the criteria of listing 11(F) traumatic brain injury and 12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders*; and 12.04 *Affective Disorders*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or is medically equivalent to the listing requirements. 20 CFR 404 §12.03 describes the mental listing as follows:

Schizophrenic, Paranoid and Other Psychotic Disorders:
Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

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

- 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 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 supporting living arrangement, with an indication of continued need for such an arrangement.

The requirements for Affective disorders are very similar. 20 CFR 404 §12.03 describes the mental listing for *Affective Disorder* as follows:

Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

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

- C. Medically documented history of a 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) – (3): same as above.

In the present case, Claimant was medically diagnosed with bipolar disorder, Mixed Personality Disorder, Paranoia and Schizoaffective disorder. The medical records provided

describe Claimant as having an “extensive history of several psychiatric hospitalizations.” Claimant has been hospitalized in a psychiatric ward, including at least twice from suicide attempts, four (4) times in the past year and a half. The first admission in 2009 was for almost a month and the second for 10 days. The hospital admissions alone would affect Claimant’s ability to work as he cannot work on a regular and consistent basis, 8 hours a day, 5 days per week or an equivalent work schedule. SSR 96-9P. The Administrative Law Judge finds that Claimant’s hospital admission constitutes “repeated episodes of decompensation.” Furthermore, Claimant has been living in a group home and half way house on and off for the last six years. Claimant is simply unable to function outside a highly supporting living arrangement. Accordingly, the undersigned finds that Claimant meets the list of 12.04(C)(1) due to his paranoia, schizoaffective and bipolar disorder resulting in repeated episodes of decompensation of extended periods and the need for a supportive living environment.

This decision is buttressed by the fact that Claimant was found to be moderately limited in the performance of simple tasks and markedly limited by his treating physician in his ability to understand and remember complex instructions, carry out complex instructions and in his ability to make judgments on complex work related discussions. Claimant was also assigned a GAF of 40 just months ago. This GAF score is defined as “some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood.” Furthermore, Claimant is currently living in a ¾ house getting psychiatric treatment in the form of drugs and group therapy on a continuing basis.

Therefore, the undersigned finds the Claimant’s medical records substantiate that the Claimant’s mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step

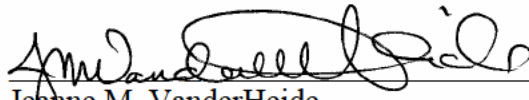
for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of 12/3/08 including retroactive benefits applied for.

Therefore the department is ordered to initiate a review of the application of December 30, 2008, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in December, 2010.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/13/09

Date Mailed: 11/23/09

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 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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JV/dj

cc:

