

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.: 2009-23811
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
September 9, 2009
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

HEARING DECISION

This matter was conducted by an in-person hearing on September 9, 2009, pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on April 9, 2009. Claimant was present and testified. Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("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. Claimant applied for MA and SDA as of December 8, 2008, and March 2, 2009. No retroactive benefits were applied for.
2. Claimant is 47 years of age.
3. Claimant is left handed.

4. Claimant's impairments have been medically diagnosed as stroke with cognitive impairments, hypertension and bipolar disorder.
5. Claimant's physical symptoms are speech problems, tingling and loss of use of left arm, difficulty writing, sleep disturbances, difficulty with balance and ambulation, right-sided weakness and stuttering.
6. Claimant's mental symptoms are mood swings, frustration, difficulty finding the right words, difficulty completing sentences and memory problems.
7. Claimant suffered a stroke in [REDACTED] and was hospitalized.
8. Claimant takes the following prescription medications:
 1. Cymbalta
 2. Lamictal
 3. Abilify
 4. Wellbutrin
 5. Remeron
 6. Nicotine patch
 7. Lisinopril
 8. Aspirin
 9. Zantac
 10. Loratadine
 11. Tylenol ES PRN for osteoarthritis pain

Claimant reports constipation and blurred vision as significant side effects.

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 last worked in 2004 at a commercial laundry as a checker. Claimant was responsible for checking laundry in and out.
12. Claimant receives help from her daughter and ex husband with all household chores, including cooking, driving, laundry and grocery shopping.
13. Claimant is unable to navigate stairs, lift pans or a load of laundry.
14. Claimant uses a walker for ambulation.
15. The Department denied Claimant's request for MA benefits on April 1, 2009.

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

██████████ Mental Status Exam (Exhibit 5)

COMPLAINTS: Mood disorder since ██████████ including sad mood, loss of interest, lethargy, social withdrawal, intermittent manic episodes, decreased memory, decreased concentration and a history of alcohol, cannabis and cocaine abuse. Cocaine relapse on ██████████ and suffered mild stroke. Claimant has problems with attention, concentration and memory since that time. The Claimant also exhibited mild nominal aphasia during the evaluation.

HX: Claimant's psychiatric treatment began in late ██████████ at an outpatient for mood swings, depression and substance abuse. She also suffered from cognitive deficits following her stroke in ██████████. The Claimant has never treated as a psychiatric inpatient. The Claimant was clean and sober for just under ██████████ years and then relapsed on cocaine on her 47th birthday, ██████████. The relapse was apparently a contributing factor to her stroke, which occurred on that same day.

SOCIAL FUNCTIONING: She evidences mild expressive and receptive language problems secondary to her stroke, e.g., she required many questions to be repeated prior to understanding the question and often had difficulty remembering names, terms or her train of thought.

STREAM OF MENTAL ACTIVITY: Her thought content was poorly organized with many vague responses. She relied on her informant for many names, dates and specific details of events due to deficits with memory consistent with a stroke.

INTELLECTUAL FUNCTIONING: Extremely low range. The Claimant's diagnosis of dyslexia, a reading disorder that is a learning disability, indicates that she previously functioned at least in the Low Average range of adult intellect, i.e. a Full Scale IQ of at least 85 to 90. Thus, her current cognitive functioning is clearly due to marked cognitive decrements caused by her stroke.

DX: Cognitive Disorder Due to Stroke, Bipolar 1 Disorder, Most Recent Episode Depressed, Moderate, Reading Disorder.

CURRENT GAF: 45

MENTAL RESIDUAL FUNCTION CAPACITY ASSESSMENT: Markedly limited as follows:

1. Estimated degree of restrictions of activities of daily living;
2. Estimated degrees of deficiencies of concentration, persistence or pace;
3. Estimated degree of risk of deterioration or decompensation at work;
4. Estimated degree of work limitations based upon evaluation of Claimant's psychological status:
 - a. Independently perform routine repetitive tasks
 - b. Sustain concentration on a task
 - c. Sustain attention on a task
 - d. Use judgment
 - e. Achieve goals and respond to time limits
 - f. Perform work requiring contact with others
 - g. Relate appropriately to the public
 - h. Respond appropriately to usual work situations

- i. Respond appropriately to changes in routine work situation
- j. Respond appropriately to customary work pressures
- k. Maintain production standards
- l. Performs tasks on schedule and maintains attendance and punctuality

“I did not treat this Claimant prior to this evaluation, but in my professional opinion, the claimant’s limitations reached their present severity level on [REDACTED] and are expected to last for at least an additional 12 months.”

[REDACTED] Psychiatrist IME (Exhibit 4)

HX: Pt was not a good historian mainly because of her speech problems, which is the result of stroke. She was very cooperative and tried her best to answer questions, but she had difficulty finding the right words, and sometimes could not complete sentences, although she knew what she wanted to say. She suffered a stroke in [REDACTED], which caused right sided weakness, speech and memory problems which were apparent due to her difficulty in remembering events and their times, etc.

ADD’L INFO: Her cognitive and short-term memory problems can cause problems doing simple jobs.

DX: Cognitive deficits due to general medical condition, post-traumatic stress disorder, in partial remission, alcohol, cocaine and marijuana abuse in early remission; status post stroke and hypertension

PROGNOSIS: The prognosis is guarded

The Claimant is NOT able to manage her benefit funds.

[REDACTED] Emergency Medicine IME (Exhibit 3)

HX: Stroke in [REDACTED], continues to have speech problems as well as stuttering. Depression for a long time with mood swings, crying spells and sadness. Drug history is positive for using marijuana, cocaine and crack up to [REDACTED]

SYMPTOMS: Positive for memory problems and stroke with left-sided weakness and stuttering. Positive for hypertension and hyperlipidemia

RESPIRATORY: Positive for inspiratory and expiratory wheezing scattered throughout the lung fields with mild shortness of breath

EXTREMITIES: She uses a walker. Her gait is slow. She has minimal weakness of the left side and a slight limp on the left side.

BONES & JOINTS: Able to squat to 50% of the distance and recover and bend to 60% of the distance and recovery. Straight leg raising while lying 0-50

NEUROLOGIC: Slow gait, slight limp on left side. She has weakness on the left side.


[REDACTED] MRI of Brain (Exhibit A)

1. Findings raising concern for foci of recent ischemic change involving the right middle cerebral artery distribution
2. Remote lacunar infarctions of the bilateral cerebellum

[REDACTED] Psychiatrist Letter (Exhibit B)

“For the first four months of [REDACTED], Ms. Moore suffered from a variety of disabling psychiatric symptoms at this time, which, in my professional opinion, immobilized her. . .

her symptoms include isolative behavior, feelings of despair, episodic confusion and extreme difficulty remembering, paying attention and concentrating.”

 Psychiatric Treatment Notes (Exhibit B)

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 Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

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, the Claimant has not worked since 2004. 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 and stroke with residual left-sided weakness and cognitive defects. Claimant was prescribed a walker for ambulation and has difficulty with her short-term memory. The medical evidence has established that Claimant has medical impairments that have 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 cocaine 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 cocaine addiction. In fact, Claimant was using cocaine when she suffered the stroke on [REDACTED]. Claimant is currently not using cocaine and had been in remission for several years previous to the [REDACTED] relapse as well. Claimant's psychiatric diagnosis remains regardless of any substance abuse as do Claimant's residual problems that occurred as a result of the stroke. Since Claimant's mental and physical limitations remain disabling even without the cocaine use, the 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). After reviewing the criteria of Listing 12.02, *Organic Mental Disorders*, and 12.04, *Affective Disorders*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meet or are medically equivalent to the listing requirements. The mental Listings are described as follows:

Organic Mental Disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically

related to the abnormal mental state and loss of previously acquired functional abilities.

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

- A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:
1. Disorientation to time and place; or
 2. Memory impairment, either short-term (inability to learn new information), intermediate, or long term (inability to remember information that was known sometime in the past); or
 3. Perceptual or thinking disturbances (e.g. hallucinations, delusions); or
 4. Change in personality; or
 5. Disturbance in mood; or
 6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
 7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.;

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.

20 CFR 404, Subpart P, Appendix 1, Rule 12.02. The Listing for *Affective Disorders* is as follows:

- 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 distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking;

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.

20 CFR 404, Subpart P, Appendix 1, Rule 12.04.

In the present case, Claimant has a history of medical diagnosis of bipolar disorder since 2003. Claimant also has a history of cocaine and alcohol addiction. However, the records and testimony indicate that Claimant was clean for five years prior to [REDACTED]. Two independent medical evaluators, a psychiatrist and a psychologist, found Claimant to be disabled due to her bipolar disorder and symptoms such as isolative behavior, feelings of despair, episodic confusion and extreme difficulty remembering, paying attention and concentrating. These mental health professionals have also opined that Claimant's ongoing symptoms of bipolar disorder have interfered with her ability to perform basic work activities. Claimant was most recently assigned a GAF score of 45 which indicates "serious symptoms OR any serious impairment in social, occupational, or school functioning". The undersigned finds that Claimant has shown persistent depressive syndrome since [REDACTED].

Since her stroke in [REDACTED], Claimant has also suffered expressive and receptive language problems as well as memory problems. The Mental Status IME found through intelligence testing that Claimant was functioning in the extremely low range of intellect, which was a decrease from her previous Low Average range of adult intellect. Claimant also exhibited short-term memory problems which the independent psychiatrist found could cause problems doing simple jobs. In addition, both mental health professions found Claimant unable to manage her own benefit funds. This Administrative Law Judge finds that Claimant has exhibited

psychological or behavioral abnormalities associated with a dysfunction of the brain resulting in memory impairment and loss of intellectual functional ability with an onset date of [REDACTED].

These impairments have resulted in marked restriction of Claimant's activities of daily living; marked restriction in maintaining concentration, persistence or pace and difficulties in maintaining social functioning. 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 found in 12.02 and 12.04. 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.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. 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. Other specific financial and non-financial eligibility criteria are found in BEM/PEM 261.

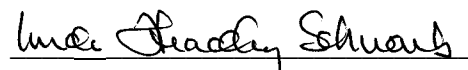
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds that Claimant is "disabled" for purposes of the MA and SDA programs.

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 January, 2007.

Therefore, the Department is ordered to initiate a review of the applications of December 8, 2008, and March 2, 2009, 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 May, 2011.

Further, a referral is to be made to Adult Protective Services to consider benefit fund management on behalf of the Claimant; and other actions as necessary.


Linda Steadley Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 6, 2010

Date Mailed: May 7, 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 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.

LSS/pf

cc:

