

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: 200924894
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 23, 2009
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on July 23, 2009.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

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 applied for MA-P, Retro-MA-P, and SDA on November 18, 2008.
- (2) Claimant is 25 years old.
- (3) Claimant has a high school education.

- (4) Claimant tried college off and on for the past 6 years and has less than half the credits needed for graduation.
- (5) Claimant is not currently working.
- (6) Claimant has a prior work history consisting of machine shop work and a structured work environment in an employment training service.
- (7) Claimant performed this job at a sedentary, light and medium exertional level.
- (8) Claimant has been diagnosed with panic disorder with agoraphobia, attention deficit/hyperactivity disorder, bipolar disorder, obsessive compulsive disorder, and post traumatic stress disorder.
- (9) Claimant was given a GAF of 48 with a guarded prognosis.
- (10) Claimant presents with symptoms that are consistent with those conditions.
- (11) Claimant has a history of severe panic attacks, having several of them per week.
- (12) Claimant's panic attacks are triggered by several different factors, including new people, staying in one place for lengths of time, or too many people around him.
- (13) Claimant has a history of obsessive compulsive behavior, including the changing of his clothes 10-15 times daily, and ritual hand washing.
- (14) Claimant has a history of 3 suicide attempts.
- (15) Claimant has no activities outside the home.
- (16) Claimant has paranoid and persecutory thoughts.
- (17) Claimant's treating source completed a Mental RFC assessment.
- (18) Claimant was rated as markedly limited in several categories, including the ability to maintain concentration for extended periods and the ability to complete a normal workday without interruptions from psychologically based symptoms.

- (19) On March 30, 2009, the Medical Review Team denied MA-P, Retro MA-P and SDA, stating that claimant had a “non-exertional impairment”.
- (20) On April 16, 2009, claimant filed for hearing.
- (21) On June 17, 2009, the State Hearing Review Team denied MA-P, Retro MA-P and SDA stating that claimant retained the capacity to perform a wide range of unskilled work.
- (22) On July 23, 2009, a hearing was held before the Administrative Law Judge.
- (23) The record was held open to secure more medical documentation.

CONCLUSIONS OF LAW

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).

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).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of mental disorders that give more than minimal difficulty in: maintaining concentration; performing activities within a schedule; remembering detailed instructions; working with others; completing a normal workday without psychologically based disruptions; interacting with the public; and

accepting instructions. Finally, claimant has provided demonstrable evidence of social withdrawal, and severe difficulties in maintaining social interaction. These symptoms have been chronic and part of a condition that started in its severe manifestation over the past two years, according to the medical records in the case. Claimant, thus, easily passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

The great weight of the evidence of record finds that claimant's mental impairment meets or equal the listings for mental impairments contained in section 12.00 (Mental Impairments).

Appendix 1 of Subpart P of 20 CFR 404, Section 12.00 has this to say about mental disorders:

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings...

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the

diagnostic description, that is manifested by the medical findings in paragraph A...

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.

Where we use "marked" 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, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis. See §§ 404.1520a and 416.920a.

12.06 *Anxiety-related disorders*: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

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 both A and C are satisfied.

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

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.

In order to meet or equal the listings for mental impairment, a claimant must either meet or equal the recommended listings contained in both the A and B criteria, or meet or equal the listings in the C criteria. After examination of the C criteria, the undersigned holds that claimant does not meet this listing. However, a careful examination of claimant's medical records, both supplied from a treating source, and from an independent Department examiner, show claimant meets both the A and B criteria.

Claimant's psychological reports, as well as those administered by the Department, show documented persistence of claimant's panic disorder, bipolar disorder, obsessive compulsive disorder, and post-traumatic stress disorder (PTSD). The documented medical evidence paints a portrait of a socially withdrawn individual. Claimant admitted to sleep disturbance, receiving only 2-3 hours of sleep per night, which is documented by claimant's treating source. Claimant's records also show an individual with decreased energy, with frequent thoughts of guilt and worthlessness, which led to, on at least three occasions, a suicide attempt. Claimant has severe obsessive compulsive tendencies. Finally, and most importantly, the medical records show, including those obtained by an independent source, that claimant has severe panic attacks at least once per week. Claimant describes the panic attacks in a medically consistent manner. Therefore, the undersigned holds that claimant meets or equals the listings found in the A criteria.

With regards to claimant's activities of daily living, the testimony and evidence of record show that claimant has marked difficulties in maintaining his daily activities. Claimant does not participate in household chores, but will occasionally cook for himself. While claimant is

capable of self-grooming, his obsessive compulsive tendencies result in the changing of clothes at least 10-15 times per day and ritual hand washing. The record shows that claimant has very little interest in normal activities, and is unable to sustain interests in every day hobbies.

Claimant has trouble leaving the home to do tasks like grocery shopping and is unable to shop unless accompanied by a person such as a parent.

Claimant also has marked difficulties in maintaining concentration, persistence, and pace. *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. These limitations must be of such an extent that claimant is held to be markedly impaired with regard to concentration persistence and pace. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

As stated above, in a typical Mental Residual Functional Capacity assessment, 8 categories are dedicated to Sustained Concentration and Persistence. Claimant received a rating from his treating source of “markedly limited” in 3 of these categories, including the categories of “ability to maintain attention and concentration for extended periods”, “ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances”, and the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.” Furthermore, claimant received a rating of “moderately limited” in 2 other categories—the ability to carry out detailed instructions and the ability to work in coordination or proximity to others without being distracted by them. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007);

Bowen v Commissioner, 473 F. 3d 742 (6th Cir. 2007); restated (again) in *Hensley v. Commissioner*, No. 08-6389 (6th Cir. July 21, 2009). The undersigned sees no reason to discount claimant's treating source opinions, as they are consistent with all psychiatric reports—one obtained from an independent source—and the undersigned's own hearing observations, and thus accepts this Mental RFC assessment as accurate.

Therefore, as these categories are exactly what were contemplated by the listings for the B criteria, the undersigned holds that claimant is markedly limited in maintaining concentration, persistence and pace.

As claimant is markedly impaired in his activities of daily living and maintaining concentration, persistence and pace, the Administrative Law Judge holds that the claimant meets the B criteria in the listings for mental impairments.

As claimant meets both the A and B criteria, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 12.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed

above, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P, Retro MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in May, 2011.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/06/10

Date Mailed: 05/13/10

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.

2009-24894/RJC

RJC/dj

cc:

