

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.: 200928147

Issue No.: 2009, 4031

Case No.:

[REDACTED]

Load No.:

Hearing Date:

September 30, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by in person hearing on September 30, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on April 29, 2009. Claimant was present and testified along with her boyfriend, [REDACTED]. [REDACTED] FIS and [REDACTED], 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") 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 SDA and MA as of February 24, 2009. Claimant applied for retroactive benefits to November, 2008.
2. Claimant is 5'6" tall and weighs 179 pounds.
3. Claimant is right handed.

4. Claimant is 38 years of age.
5. Claimant's impairments have been medically diagnosed as bipolar disorder, post traumatic stress disorder, emphysema, asthma and lumbar radiculitis.
6. Claimant's physical symptoms are achy legs, lower back pain, burning sensation, wheezing, coughing, shortness of breath, difficulty walking up and down stairs, and migraine headaches (1x/week, 4-5 hours).
7. Claimant's mental symptoms are decreased memory, poor concentration – has difficulty scheduling and handling chores, panic attacks – once every two weeks, anxiety attacks – last about 3 minutes at a time 1x/month, crying spells every day, confusion, poor appetite, sleep disturbances – claimant takes medication to help her sleep, fatigue, guilt feelings, auditory hallucinations once a week, paranoia, and low self esteem.
8. Claimant takes the following prescriptions:
 - a) Neurontin – mood stabilizer
 - b) Seroquel – 2 diff kinds
 - c) Ultram
 - d) Combivent – inhaler
 - e) Nasonex
 - f) Benodryl
 - g) Albuteral – for nebulizer machine (3x/day, now only 1x/week)
 - h) Asmanex – inhaler
 - i) Fioricet - headaches
9. Claimant has had several psychiatric hospitalizations, the last one being in 2006.
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has an 8th grade education.
12. Claimant is able to read, write and perform basic math skills; however, Claimant has a hard time concentrating.
13. Claimant last worked for a week or two in 2000. The job duties involved standing and lifting 10 lbs. Claimant is unable to work under stress and has a difficult time concentrating.
14. Claimant has prior employment experience as a machinist, assembly line working and working at a fast food restaurant (only worked 2 months).

15. Claimant testified to the following physical limitations:
 - Standing: 1 hr
 - Walking: 1 mile
 - Lifting: 25 lbs.
16. Claimant performs household chores such as sweeping, mopping, doing dishes, making beds, grocery shopping, and cooking.
17. Claimant's witness testified that Claimant experiences major mood swings. Sometimes Claimant is overwhelmed by chores and just gets upset. Claimant will forget that she put a movie in. Last week, Claimant thought that the neighbors were talking with her when they were not. Claimant will say hateful things to kids and then not remember doing it afterwards.
18. Medical records were examined as follows, in part:

2/24/10 Mental Residual Functional Capacity Assessment (Exhibit 2)

Claimant was not found to be markedly limited in any category. Claimant was moderately limited as follows:

1. The ability to understand and remember detailed instructions.
2. The ability to carry out detailed instructions.
3. The ability to maintain attention and concentration for extended periods.
4. The ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances.
5. The ability to work in coordination with or proximity to others without being distracted by them.
6. The ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent basis without an unreasonable number and length of rest periods.
7. The ability to accept instructions and respond appropriately to criticism from supervision.
8. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.
9. The ability to respond appropriately to change in the work setting.
10. The ability to be aware of normal hazards and take appropriate precautions.
11. The ability to set realistic goals or make plans independently of others.

4/2/09 Psychiatric IME (Exhibit A1-3)

HX: Abusive relationships that evolved into flashback and nightmares. Abused since age 20. New boyfriend abused her a few days ago. Used crack cocaine but sober for two years. Four previous psychiatric hospitalizations. Psychiatric treatment for 25 years – mood swings, with highs and lows. During high state, she talks a lot and does not sleep. Two hospitalizations involved cutting wrists. Began drinking at age of 9. Used to have black out spells.

MENTAL TREND AND THOUGHT: The patient admitted hearing voices, changing off and on. She feels people are after her and talking about her. She has suicidal ideations off and on. She has a poor sleep pattern. She feels helpless and hopeless at times.

EMOTIONAL REACTION: Mood is depressed and affect is blunted.

DX: Bipolar disorder mixed type with Psychotic features, Personality Disorder NOS. The prognosis is fair to guarded. GAF 55.

4/2/09 Internist IME (Exhibit A4-6)

MEDICAL SOURCE STATEMENT: Based on today's exam, the patient needs psychiatric clearance to work. The patient seems to have difficulty concentrating. Physically, she is able to work eight hours a day doing standing, walking and sitting and bending. She is able to lift 15-20 lbs of weight.

12/24/08 Comm. Mental Health Services Initial Psychiatric Evaluation (Exhibit 1, pp. 7-8)

COMPLAINTS: mood swings, cannot concentrate, cannot sleep at night, feels depressed and is having crying spells, difficulty in getting along with others and she does not want to be bothered by anyone.

HX: History of four psychiatric hospitalizations from 1994. Her last hospitalization was in 2006. Most of her hospitalizations were for suicidal attempts.

Drug and Alcohol Abuse: She has a history of using crack/cocaine daily for 16 years. She was in rehabilitation programs 3-4 times. She has been substance free for the last two years.

AFFECT: She has restricted affect.

DX: Bipolar I Disorder, Most Recent Episode Mixed, Cocaine dependence in remission.

4/25/08 Medical Exam Report Family Practitioner (Exhibit 1, pp. 11-12)

DX: Bipolar disorder, lumbar radiculitis, substance abuse, asthma

PHYSICAL LIMITATIONS: Lifting less than 10 lbs frequently, stand/walk 2 hrs in 8 hrs, sit for six.

MENTAL LIMITATIONS: Memory, sustained concentration, following simple directions, social interaction

6/30/08 – Counseling Discharge (Exhibit 1, pp. 14-17)

CI only attended a few sessions and did not return for treatment.

CI reported sobriety of 1 year from crack and reduction in alcohol consumption.

However she continued to associate with others using crack. CI only made minimal progress in tx due to short duration in participating in tx.

3/25/08 Psychiatric Eval. (Exhibit 1, pp. 18 –

Seen at clinic twice before, but dropped out of treatment.

DX: Bipolar I Disorder, most recent episode mixed. Posttraumatic Stress Disorder, chronic, Alcohol Dependence. Rule out Schizoaffective Disorder. Rule Out Personality Disorder.

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 Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2000. 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 F2d

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 bipolar affective disorder, post traumatic stress disorder, asthma and lumbar radiculitis. Claimant has been placed on physical restrictions of lifting less than 10 lbs frequently and standing/walking for only 2 hours in an 8 hour day by her physician. Claimant also has mental limitations as she has been found to be moderately limited in a wide array of mental functioning categories. Therefore, the medical evidence has established that Claimant has a medical impairment(s) 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 a long history of alcohol and 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.

The Claimant's medical records indicate that Claimant has gone through drug and alcohol treatment programs several times. The most current evidence shows that Claimant is currently not using any cocaine. It is unknown whether Claimant's mental condition is exacerbated by the ETOH abuse or not. Probably the most revealing factor, however, is the fact that Claimant was incarcerated for a period of time and continued to treat for her mental disorder while she was in prison. Therefore, this Administrative Law Judge finds that the alcohol and/or cocaine addiction is not a contributing factor material to a determination of disability.

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. 20 CFR 404, Subpart P, Appendix 1, Rule 12.00, *Mental Disorders*.

After reviewing the criteria of listing 12.04 *Affective Disorders*, the undersigned finds the Claimant's medical records do not substantiate that the Claimant's mental impairments meet or are medically equivalent to the listing requirements. 20 CFR 404 §12.04 describes the mental listing 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 is met when the requirements in 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 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;

or
- 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. 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.

In the present case, Claimant was medically diagnosed most recently with bipolar affective disorder. Claimant's symptoms as described above meet the criteria in "A" but Claimant's Mental Residual Functional Capacity showed Claimant to only be moderately limited in activities of daily living, social functioning and maintaining concentration, persistence or pace. Claimant also has a history of several psychiatric hospital admissions. However, all of the psychiatric admissions are from 2006 or before. The Claimant's previous episodes of decompensation are not a fair indicator of Claimant's current level of functioning. Accordingly, In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting bipolar disorder, post traumatic stress disorder, emphysema, asthma and lumbar radiculitis. Claimant's prior employment experience includes machinist, assembly line worker and working at a fast food restaurant.

These jobs are all considered unskilled and require a light exertional level. Claimant has been placed on lift/stand/walk physical limitations by her physician. Therefore, based on physical limitations alone, the undersigned finds the Claimant currently limited to sedentary work. Claimant is, therefore, unable to return to past relevant work in any of the above listing prior occupations. Evaluation under step five will be made according to the law.

5. Ability to Perform Other Work

In the fifth step of the sequential evaluation of a disability claim, the trier of fact must determine: if the claimant's impairment(s) prevent him/her from doing other work. 20 CFR 416.920(f). This determination is based on the claimant's:

- (1) "Residual function capacity," defined simply as "what you can still do despite your limitations," 20 CFR 416.945.
- (2) Age, education and work experience, and
- (3) The kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 829 (1987).

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally at the level of sedentary work. Sedentary work is described as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 CFR 416.967(a). Claimant's most recent doctor recommended physical limitation dictates that Claimant is limited to lifting less than 10 lbs throughout the day and standing/walking less

than two (2) hours per eight hour day. Therefore, Claimant would be limited to sedentary work. 20 CFR 416.967.

Claimant is thirty-eight years old. For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English. 20 CFR 404, Appendix 2 to Subpart P, Rule 200(h)(2). Claimant's education is "limited or less – at least literate and able to communicate in English" and her previous work experience is unskilled. While generally, such an individual would be able to make a transition into sedentary work, there are exceptions:

Nevertheless, a decision of "disabled" may be appropriate for some individuals under age 45 who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of "disabled." Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work.

20 CFR 404, Appendix 2 to Subpart P, Rule 201.00(h)(3). In the present case, Claimant has a limited work history involving unskilled labor. Claimant's basic education is only through the 8th grade. While Claimant is physically capable of performing sedentary work, Claimant also has mental limitations. Claimant hears voices and has suicidal ideations. The independent psychiatrist found that Claimant's prognosis was fair to guarded. The independent internist recognized a mental issue as well in that he determined Claimant needed psychiatric clearance to work. Claimant is moderately limited in her abilities regarding detailed instructions, maintaining

extended periods of concentration, being punctual, completing a normal workday without psychological interruptions, and maintaining socially appropriate behavior. The regulations are specific that in this instance, a detailed analysis of the impact of Claimant's limitations needs to be considered in light of the available jobs in the economy. However, the Department has failed to provide any vocational evidence which establishes that Claimant has the residual function capacity for substantial gainful activity and that, given Claimant's age, education and work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations. Accordingly, the Administrative Law Judge concludes that Claimant is disabled at the fifth step for the purposes of the MA program.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). 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 PEM 261.

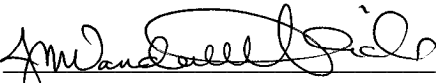
In this case, there is sufficient evidence to support a finding that Claimant's impairment is disabling her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is “disabled” for purposes of the Medical Assistance program and the State Disability Program inclusive of any retroactive benefits.

It is ORDERED; the Department’s determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the February 24, 2009 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant’s continued eligibility for program benefits in May, 2011.

/s/ 

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

Date Signed: May 10, 2010

Date Mailed: May 10, 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.

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