

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: 2009-31295
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 10, 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 September 10, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was her mother [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retroactive MA benefits, and terminate her State Disability Assistance (SDA) benefits?

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 April 27, 2009, claimant filed an application for Medical Assistance and

benefits alleging disability. Claimant had previously been approved for SDA with a review date of May, 2009.

(2) On June 4, 2009, the Medical Review Team (MRT) denied claimant's MA application stating that claimant was capable of past relevant work per 20 CFR 416.920(E), as a fast food worker. MRT also denied claimant's ongoing SDA eligibility.

(3) On June 4, 2009, the department caseworker sent claimant notice that her MA application was denied and that her SDA benefits will terminate.

(4) On June 17, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On August 13, 2009, the State Hearing Review Team also denied claimant's application stating she was capable of performing other work, namely unskilled work per 20 CFR 416.968(a) and Vocational Rule 203.28.

(6) Claimant is a 35 year old woman whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 200 lbs. after allegedly gaining 60 lbs. in the last 8 months. Claimant finished 12th grade and can read, write and do basic math.

(7) Claimant states that she last worked in [REDACTED] at [REDACTED] processing donated clothing, job she held for less than a year and lost when she was caught shoplifting. Claimant also worked for 4 years in food service, as a bagger, in cleaning jobs, and as a beauty store cashier.

(8) Claimant lives with her mother and receives food stamps, and states that her friends have also supported her. Claimant has never had a driver's license as she did not pass driver's training. Claimant cooks easy meals, grocery shops with her mother, does basic house cleaning and yard work, and watches movies, listens to music and shops to pass the time.

(9) Claimant alleges as disabling impairments: anxiety (especially around males due to two attempted rapes by a friend and an acquaintance for which she took no legal action), depression, migraine headaches, back pain due to being overweight, OCD that makes her clean all the time, bipolar disorder, arthritis, borderline personality disorder, learning disability, social anxiety, panic attacks, high stress, paranoia, alcoholism, insomnia, acid reflux, shortness of breath, and being overweight.

(10) Claimant has applied for Social Security disability several times in the past and been denied, and has a 2009 application pending.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2003. 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 or a combination of impairments that is “severe”. An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes a [REDACTED] [REDACTED] indicating that the claimant had not been following the directions for taking her medications, and received Effexor XR samples from her boyfriend in [REDACTED] and has been using them. She still had 77 pills remaining, and thus, it was no wonder claimant was more moody and labile. It was explained to the claimant and her mother who was present that Effexor is fuel for the manic depression and she would be manicky and irritated, however, they were adamant about trying the Effexor XR.

[REDACTED] states that claimant chose to come for treatment after being at [REDACTED] and receiving Effexor XR there. Claimant stated that she has had a long history of treatment starting in 1997. It was noted that claimant was hospitalized in 1997 for alcoholism and diagnosed with a bipolar disorder. Claimant stated that she was medically healthy. Claimant was alert and oriented x3, her speech was fluent, she appeared open and honest but was sort of a vague historian. Claimant had no

active suicidal or homicidal ideation, no active voices or visions, her judgment and insight was present as well as her concentration, and her mood at that point was stable. Claimant stated she had been taking part of her prescribed medication but not all of it. Claimant was diagnosed with historical bipolar affective disorder, polysubstance dependence, and current GAF of 40.

Psychiatric Progress Note of April 16, 2007 indicates claimant is alert and oriented x 3 and said her mood is pretty stable. No suicidal or homicidal ideation was noted, no active voices or visions, and her judgment and insight was present.

Progress Note of December 10, 2007 quotes the claimant as always having another question or wanting something else, and this time she wanted Ambien CR, put forth by her mother. Claimant was psychiatrically stable.

Claimant was also stable on March 10, 2008 when she wanted to change her medicine based on her friend's suggestion. Claimant's follow through was poor.

Progress Note of April 7, 2008 states that the claimant was late because she was walking. Claimant had extremely pressured speech and asked for an increase in Seroquel.

May 5, 2008 Progress Note describes the claimant as much calmer in her presentation, although she said she has not really been taking her Seroquel for more than a day or two. Claimant also said she has been self-medicating and has increased her own Lamictal to 200 mg. after she saw a friend do this. Claimant's judgment is questionable, but she has no suicidal or homicidal ideation, and no active voices or visions.

June 16, 2008 Progress Note states that the claimant has been self-medicating and has increased her medication and tried to call the pharmacy and get earlier medication prior to the date she was allowed to get it. Claimant presented with rapid pressured speech and cites anxiety and some insomnia, and was warned against self-medicating.

On July 23, 2008 claimant was alert and oriented x 3, and her affect was much calmer. Claimant also had stable mood on August 18, 2008, but felt Seroquel made her gain weight, even though she really had not gained any. Claimant has had lack of exercise and poor dietary habits, which have predated her use of medication.

Progress Note of September 29, 2008 states that the claimant had very pressured speech, and once again she stopped her medicines. Claimant at first said she ran out of Pristiq, but she had made no effort to get more of it, and now stated that she would like to try something else. Psychiatrist asked the claimant what she and her mother think they want to have her try, due to her past history, and they decided on Paxil.

On October 27, 2008 claimant presented with pleasant affect and fairly stable mood, and was overall doing well. Claimant still had pressured speech and her compliance is always an issue, but at this point she reported feeling improvement.

Medical Examination Report for November 12, 2008 exam indicates as claimant's current diagnosis bipolar, anxiety and chronic back pain. Claimant weighed 185 lbs., had blood pressure of 110/70, and all of her examination areas were normal. Claimant's condition was stable, she had no physical limitations, and her only mental limitation was that anxiety/depression/bipolar may limit social interactions. Medical Needs form completed by the same doctor indicates that the claimant can work both at her usual occupation and at any job.

An examination by a licensed psychologist was performed with the claimant on [REDACTED], [REDACTED], for [REDACTED]). Claimant was asked what particular problems have led her to make an application for Social Security benefits, and she pulled out a notebook and stated she had to reference her notes. Claimant then replied "I have bipolar, BPD, OCD. I have a learning disability that causes an auditory processing disorder". Claimant then

continued to read off a lengthy list that claims a variety of psychopathologies, mental illnesses, as well as various medical problems. Claimant also listed a claim of cognitive problems and substance abuse problems as reasons for her application for disability. Claimant denied a history of drug or alcohol problems, but her mother, who accompanied her to the interview, interjected “liar”. It was noted that psychiatric evaluations reviewed indicate a history of polysubstance dependence as well as marijuana, LSD, and mushroom abuse.

Claimant denied having any difficulties completing her activities of daily living, accomplishing basic household tasks, or cooking. Claimant’s hygiene was intact, and she had no problems with ambulation, gross motor control or fine motor control. Claimant was cooperative with the interview, but often attempted to monopolize the interview. Claimant provided excessive detail in all of her responses, and also presented a great deal of “therapy speak”, meaning she would use therapeutic terminology in describing her experiences. However, when asked to further elaborate or describe the terms she used, claimant could not offer explanation. Claimant was lucid with good eye contact. Claimant presented as quite willing to endorse various signs and symptoms of potential mental health problems.

Claimant’s gross attention and concentration faculties were intact, no tangential thinking was observed, and overall, there were no difficulties with mentation observed. When claimant was asked if she had ever experienced hallucinations she said she did, but further discussion did not suggest legitimate hallucination experiences operating. When asked if she has ever had any difficulty with delusions or delusional ideations, claimant stated she did, but when asked to describe these issues, she replied “I can’t really recall right now”. Claimant also stated she has attempted suicide on a “few” occasions, but could not recall when was the last time. Claimant denied any current suicidal ideation or intent. Claimant also stated that she had experienced

flashbacks, but further description did not suggest any legitimate experiences of flashback or dissociative episodes occurring.

Claimant displayed a full range of affect and described depressive systems that include anhedonia, lack of motivation, and social withdrawal. Claimant described somewhat mild or chronic symptoms of depression that did not necessarily interfere with her ability to carry out her day-to-day activities. She did not endorse any legitimate experiences of acute mood swings, and her report did not suggest legitimate experiences of panic attack.

Claimant was oriented to person, place, and time. Her immediate memory was intact, and her recent memory was largely intact. Past memory was intact, as well as calculation abilities. Claimant's abstract thinking abilities were limited. Examiner noted that the claimant was quite difficult to interview, as she attempted to monopolize the interview, introducing various signs and symptoms that she likely thought would suggest she was acutely mentally ill. It did appear that there may be some level of mild depression operating, and claimant meets the criteria for a Dysthymic Disorder. However, this would not affect her ability to carry out her activities of daily living or be gainfully employed. It does appear that the claimant suffers from a serious personality disorder, and at the current time she would meet the criteria for a Personality Disorder NOS (Borderline and Histrionic Features). Claimant current GAF was at 54. Prognosis for the mild depression is quite good with appropriate mental health treatment. Diagnosis for the personality disorder is quite guarded. Examiner was of the opinion that the claimant could not manage her benefit funds due to a potential substance abuse problem.

████████████████████ indicates that the claimant listed a variety of physical issues and problems lifting, squatting, bending, walking, talking, stair climbing, seeing due to bad back, being overweight, bad knees, arthritis, SOB. Claimant's records however show no

mention of back pain until late 2008 or early 2009, and prior to that claimant was treated for toe pain and jaw pain. Claimant also alleged chest pain but her EKG was normal, and there are no x-ray reports supporting back or knee problems. Claimant was found to be less than credible as there are no medical records supporting the physical symptoms and limitations reported by her. Claimant was noted to appear to be exaggerating her symptoms and limitations related to headaches and pain, she is not consistent in reports of functional limitations, and the intensity and severity of the symptoms and limitations are not consistent with medical evidence in file.

██████████ conclusion is that claimant's physical impairments are non-severe.

██████████ conclusion as far as claimant's mental issues states that she has mild depression and personality disorder that could reasonably be expected to produce some of the alleged symptoms and limitations she reported. However, claimant's report of the intensity and severity of the limitations alleged are not fully supported and consistent with the evidence in file. It is noted that the claimant has had multiple SSI denials but did not allege any special education until recently. ██████████ opinion is that the claimant is not very credible, and that her mental condition does not prevent claimant from being gainfully employed, as she appears capable of unskilled work.

After considering all of the evidence, this Administrative Law Judge finds there is no objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant has cited a long list of variety of mental illnesses in the hearing. Claimant's Psychiatric Progress Notes clearly show that she was not compliant with her medication, and that she decided on her own what type of medications she should be on and what dosage, based on

what her mother thought, or what her friends or boyfriend were using. Claimant's decision to self-medicate and not follow psychiatric directions as far as what type of medication she is to be on and what dose could easily be the cause of her mental issues, as her pressured speech, etc. could be simply the result of medication misuse/abuse. The evidentiary record is insufficient to find claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed 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 not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, if claimant had not already been denied at Step 2, the Administrative Law Judge would have to deny her again based upon her ability to perform past relevant work. Claimant's past relevant work was doing simple unskilled work such as in food service, as a bagger, cleaning jobs, processing clothing at a [REDACTED], etc. Following the hearing claimant provided work reports from [REDACTED] from [REDACTED] to show how she was rude to a customer, how she used profane language, that she had left work without permission, etc. This Administrative Law Judge finds claimant's poor work performance from 1997 and 1998 irrelevant to evaluating her ability to perform past relevant work. Claimant also provided her

grandmother's death certificate indicating she shot herself in 1974, a year before claimant was born, perhaps attempting to show an impact on her mental state due to this death. Finding that the claimant is unable to perform work which she has engaged in in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

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).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls....

20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do at least medium work if demanded of her. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light, sedentary and medium work. Under the Medical-Vocational guidelines, a younger individual (claimant is age 35), who is a high school graduate and has an unskilled or no work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.28.

The claimant has not 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). Although the claimant has cited medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no 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. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance, and terminated her State Disability Assistance benefits. The claimant should be able to perform a wide range of light, sedentary and medium

work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

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

Date Signed: April 19, 2010

Date Mailed: April 19, 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.

cc:

[REDACTED]