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: 2009-3581
Issue No: 2009/4031
Case No: [redacted]
Load No:
Hearing Date:
February 26, 2009
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 February 26, 2009. Claimant and her [redacted] appeared and testified.

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

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 is a 50-year-old female with a 10th grade education who stands approximately 5'5" tall and weighs approximately 140 pounds; she is right hand dominant.

(2) Claimant completed 10th grade; she has an unskilled work history, was last employed as a laundromat attendant.

(3) Claimant started that job in [redacted] and left in [redacted] after being threatened with rape/murder by an [redacted] while working one night (Department Exhibit #1, pgs 28 and 45).

(4) Claimant said it felt like a gunshot went off in her head during this assault; she started routinely pulling out her hair in the gunshot spot and this behavior continues sporadically into the present, per her community mental health case manager's hearing testimony.

(5) Claimant rarely leaves her house and she has not left her house unaccompanied since this incident occurred.

(6) Claimant's case manager testified the sessions she conducts with claimant (one to three times monthly) always occur in claimant's house because claimant's anxiety uncontrollably escalates anywhere else.

(7) Claimant's case manager transports claimant to her psychiatric medication reviews because claimant would not attend otherwise.

(8) Claimant's current psychotropic medications ([redacted]) are not effective in controlling her marked social anxiety or severe agoraphobia.

(9) Claimant's case manager testified that, in the three years she's worked with claimant, claimant's symptoms have not decreased by any significant level despite periodic medication changes throughout this time.

(10) Claimant testified she will not leave her home because she knows she is going to die; she thinks her former attacker will find her and kill her (these obsessive thoughts are being addressed in treatment).

(11) One of claimant's earliest psychiatric evaluations, dated [redacted], notes claimant's demeanor was extremely labile, agitated and anxious; her speech was pressured and her thought processes were markedly tangential (Department Exhibit #1, pg 21).

(12) Claimant's demeanor at hearing on [redacted] was identical to that described above; she repeatedly insisted she must leave the hearing immediately because she was afraid of dying (See Finding of Fact #8 and #9 above).

(13) Claimant let her driver's license expire after she had a motor vehicle accident at age 19 where she, as the driver, wrapped her vehicle around a tree and put her sister's head through the windshield; claimant has been terrified to drive ever since (Department Exhibit #1, pg 18).

(14) A mental status examination dated [redacted] states in relevant part:

> [Claimant] is a middle aged white female seen on her own. As in the last visit she refused to sit on the chair, she swiped it off with her sleeve before considering sitting on it and then she stood up real fast and paced throughout the visit. She did not open the doorknob, but rather pulled her sleeve over her hand and pushed the door open. She comes across as being quite anxious and dysfunctional Affect is blunted. Mood is with mood swings. She is having a fair amount of Obsessive Compulsive symptoms. No evidence of delusions or hallucinations. She denies suicidal thoughts. Insight and judgment are impaired (Department Exhibit #1, pg 64).

(15) Claimant's current diagnoses are: (1) Obsessive Compulsive Disorder and (2) Post Traumatic Stress Disorder (Department Exhibit #1, pg 139).

(16) Claimant's most recent progress report states in relevant part:

> [Claimant] is a middle aged [redacted] female, dressed appropriately with good hygiene and grooming. She maintained her weight of 142 pounds from her last visit. Patient presented with psychomotor agitation. Preoccupation of contamination persists. Thought process is concrete. Patient's mood is anxious with congruent affect. She denies suicidal or homicidal ideation. No

> hallucinations or delusions. Patient has fair to poor focus, concentration and memory. Patient has fair insight and judgment (Department Exhibit #1, pg 139).

(17) Claimant's caseworker testified at hearing that, without continued treatment she will most likely decompensate beyond the poor level of functioning she has attained thus far.

(18) Claimant's case manager opined the level of severity of claimant's emotional symptoms currently render her unemployable.

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

The applicable federal regulations state:

> "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 CFR 416.905.

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Medical findings consist of symptoms, signs, and laboratory findings:

(a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

(c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

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

unctioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

...Where "marked" is used 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, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively, and on a sustained basis. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...The context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness, and sustainability. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

We do not define “marked” by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others,

communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

We do not define "marked" by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...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. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway

> house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).
>
> The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

Claimant's mental health history and current need for treatment is extensively documented in the record. Her medical packet and the detailed, credible testimony presented at hearing clearly establish claimant has had (and continues to have) severe, chronic limitations in social functioning. Additionally, the federal regulations at 20 CFR 404 Subpart P, App. 1, 12.00(C)(4) provide that episodes of decompensation may be inferred from the medical records showing documentation of the need for a more structured psychological support system (i. e. hospitalizations, intensive out-patient therapy, placement in a halfway house or a highly-structured and directed household), which is precisely the situation in claimant's case.

While claimant is marginally stable in environments which she considers secure, none of the consulting professionals opined she is capable of performing substantial gainful work activity in the competitive work place. Claimant's living arrangement is highly self-limited, and buffered by extensive external therapeutic support, without which, decompensation can most certainly be inferred. Consequently, for MA/SDA eligibility purposes, claimant has established the existence

of a [redacted] Listing Level mental impairment (Anxiety Related Disorders), entitling her to disability status under her disputed application, filed April 22, 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not disabled.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

(1) The department shall process claimant's disputed MA/SDA application and award her all the benefits she is entitled to receive thereunder.

(2) The department shall review claimant's condition for improvement in [redacted].

(3) The department shall obtain all current treatment notes, progress reports, etc. at the time of review.

(4) Claimant should be aware that failure to follow her treatment plan may result in denial of continued benefits at review.

/s/_____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed:_[redacted]_____

Date Mailed:_[redacted]_____

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 receipt 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.

MBM/db

cc: [redacted]