

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No: 2009-6919

Issue No: 2009; 4031

Case No: ██████████

Load No: ██████████

Hearing Date:

February 12, 2009

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted in Warren, Michigan on Thursday, February 12, 2009. The Claimant appeared, along with ██████████ ██████████ and testified. The Claimant was represented by ██████████ ██████████ appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P"), Retro MA-P and the State Disability Assistance ("SDA") programs for the period from February 2008 through May 2008.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted a public assistance application seeking MA-P, Retro-MA from February 2008, and SDA benefits on March 7, 2008.

2. On August 1, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment did not prevent employment for 90 days or more for SDA purposes, and finding the impairment(s) was non-severe for MA-P purposes. (Exhibit 1, pp. 2, 3)

3. On August 11, 2008, the Department sent the Claimant an eligibility notice informing the Claimant that her MA-P benefits were denied. (Exhibit 1, p. 1)

4. On November 3, 2008, the Department received the Claimant’s Hearing Request protesting the determination that the Claimant is not disabled.

5. On January 5, 2009, the State Hearing Review Team (“SHRT”) found the Claimant disabled effective June 2008 for purposes of the MA-P and SDA programs. (Exhibit 2)

6. The SHRT found the Claimant not disabled for the period from February 2008 through May 2008. (Exhibit 2)

7. The Claimant’s alleged disabling impairments are due to depression, anxiety, insomnia, scoliosis, and skin rash.

8. The Claimant’s impairment(s) will last or have lasted for 12 months or more.

9. At the time of hearing, the Claimant was 46 years old with a [REDACTED] birth date; was 5’ 1” and weighed 105 pounds.

10. The Claimant is a high school graduate with some college.

11. The Claimant’s previous employment includes sales, child care, and cleaning.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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”).

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) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual’s subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and

(4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in March of 2007. The Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely

from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

On [REDACTED] the Claimant was admitted to [REDACTED] due to a skin rash and swelling. The physical examination revealed crusted blood and scaling on the Claimant's arms, legs, neck and trunk. The Claimant's depression and anxiety was also noted as well as treatment for head lice the previous week.

On [REDACTED] [REDACTED] the Claimant presented to [REDACTED] with complaints of chest pain and anxiety. Consultative examinations documented no cardiac problems and attributed the chest pain to anxiety and depression. The Claimant was released but returned on [REDACTED] [REDACTED] due to continued abdominal pain with nausea and vomiting. In addition to the anxiety, hypertension, and depression, the Claimant was also found to have uterine fibroids and cysts.

On [REDACTED], the Claimant was admitted to [REDACTED] with complaints of shortness of breath, nausea, vomiting, abdominal pain, and vaginal bleeding. The Claimant was diagnosed with right lower quadrant pain with nausea and vomiting of uncertain etiology, hypertension, uterine fibroid, and a history of depression and anxiety.

On [REDACTED] [REDACTED] the Claimant was admitted to [REDACTED] with complaints of back pain, numbness and tingling. A spine MRI revealed an epidural abscess of the sacrum requiring aspiration. The Claimant was discharged on [REDACTED] [REDACTED] with a final diagnoses of epidural abscess – methicillin-resistant *Staphylococcus aureus* septicemia, hypertension, depression, bilateral cervical lymphadenitis, and anemia.

On [REDACTED] the Claimant was admitted to [REDACTED] [REDACTED] after a suicide attempt. The Claimant's mental examination found the Claimant constricted, depressed, shut-down with psychomotor retardation. The Claimant was diagnosed with major depression, recurrent and panic disorder with agoraphobia, with a global assessment functioning of 40 and a guarded prognosis. The Claimant was discharged on [REDACTED] [REDACTED] with a referral/admittance into the partial hospital setting at [REDACTED] [REDACTED]. The Claimant's prognosis remained guarded at her discharge on [REDACTED] [REDACTED].

In this case, the Claimant has presented medical evidence establishing that she did have physical and psychological limitations on her ability to perform basic work activities for the period from February 2008 through May 2008 such as understanding, carrying out, and remembering instructions; use of judgment; responding appropriately to supervision and co-workers; and dealing with changes in a routine work setting. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months. Therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, 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. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and

whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B 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). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders are met when the requirements of 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 distractability; 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
3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

AND

- B. Resulting in at least two of the following:
 1. Marked restriction on 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;

OR

- C. Medically documented history of 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 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 supportive living arrangement, with an indication of continued need for such an arrangement.

In this case, medical evidence reveals that the Claimant is/was diagnosed with major depression and anxiety. The medical records document skin sores and scabies as a result of the Claimant's inability to properly care for herself. Additionally, the records document that treatment for depression and anxiety began approximately one year prior to the period at issue (February 2008 through May 2008) and establish the Claimant's loss of interest in activities; appetite disturbance with weight loss; sleep disturbance; psychomotor retardation; and marked restriction on activities of daily living and social functioning. Based upon the submitted medical documentation, the Claimant's mental impairment(s) have lasted continuously for more than a 12 month period and meet or equal the Listing impairments found at 12.04. Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes 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.

In this case, because the Claimant was found disabled for the purposes of the MA program, the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program for the period from February 2008 through May 2008.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the March 7, 2008 application, with Retro MA-P from February 2008, to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.
3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in accordance department policy in March of 2010.

/s/ _____
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: February 20, 2009

Date Mailed: February 24, 2009

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 the Circuit 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.

CMM

cc:

