

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: 2009-13707
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 6, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

A hearing was held on April 6, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. At the hearing, the Claimant was present and testified. [REDACTED] was present and represented Claimant. Victoria Allen, MCW, 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") program.

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 filed for SDA and MA on 8/6/08. Claimant requested SDA and MA retroactive to May, 2008.
2. Claimant is 5'4" tall and weighs 300 pounds.
3. Claimant is right handed.

4. Claimant is 37 years of age.
5. Claimant's impairments have been medically diagnosed as stroke and brain damage, schizophrenia, bipolar disorder, diabetes, high cholesterol and high blood pressure.
6. Claimant's physical symptoms are tiredness, pain in head (top and front of head) and neck and left leg.
7. Claimant's mental symptoms are as follows:
 - a. Memory varies, some days it's good and other days not
 - b. Concentration varies
 - c. Crying spells – in a.m. and sometimes during middle of day or at night
 - d. Weight went up
 - e. Suicidal thoughts – 3x/week (calls therapist, other times she just feels bad)
 - f. Guilt feelings
 - g. Hear things – voices every day
 - h. Frightened of being in crowds, cars and traffic
 - i. Low self esteem
8. Claimant was in a serious automobile accident on [REDACTED].
9. Claimant takes the following prescriptions: Neurotin
10. Claimant's impairments will last for a continuous period of not less than 12 months.
11. Claimant has a high school education and obtained an Associate of Arts degree in 1992.
12. Claimant is able to read and write perform basic math skills.
13. Claimant does not know when she last worked. Claimant was in school at time of her injury.
14. Claimant has employment experience as a nurse's aid for a number of years (hospital and nursing home). In this position, Claimant was required to lift any size patient, and was on her feet most of day. Claimant also took a paralegal course and interned with a judge, but never worked because she did not pass the test.
15. Claimant testified to the following physical limitations:
 - a. Sit – 40 min.
 - b. Stand – 10 min.
 - c. Walk – 4 min.

- d. Bend/stoop - none
 - e. Lift – 5-10 lbs.
 - f. Grip/grasp – not enough strength to open things
16. Claimant lives with her sister and brother in law. Claimant testified that she does not perform household chores.
 17. Claimant testified that she needs help to get in the tub/shower. In addition, she requires supervision while in the shower to assure that she does not fall.
 18. On an average day, the mental health clinic comes and gets Claimant and takes her to group therapy.
 19. Claimant uses a regular cane to help her ambulate.
 20. Claimant testified that she has periods of incontinence at least twice per week since the automobile accident. When asked whether her family was aware, Claimant testified that she usually tries to hide the evidence and will throw her clothing into the garbage.
 21. The Department found that Claimant was not disabled and denied Claimant's Medicaid application on 9/26/08.
 22. The Department approved SDA through 1/09.
 23. Medical records examined are as follows, in part:

██████████, ER and Hospital Admission (Exhibit 1, pp. 7-10).

Patient presented after head on motor vehicle collision. Patient hit a tree laterally and patient was found ejected from the vehicle approximately 30 feet. Patient was brought to the ER on a board. They were unable to place the collar because of the patient's large body habitus. The patient was intubated in the field with clear evidence of loss of consciousness. There was an abrasion/contusion of the right shoulder as well as the axilla. There was also a laceration to the medial side of the right wrist. Patient was ventilator dependent.

RADIOLOGICAL STUDIES: ETPA of the chest which showed possible left lung base atelectasis. Right wrist x-ray showed that it was a suboptimal study, but no fracture found. CT head without contrast showed a subdural hematoma in the right temporal lobe as well as in intercranial hemorrhage in the right frontal temporal and left subfrontal lobes.

HOSPITAL COURSE: Neurosurgery was consulted. Repeat CT of brain recommended. Follow up CT of the head without contrast

on [REDACTED] showed evolving left temporal lobe subacute infarction, a decrease in intracranial hemorrhage in the right frontal temporal and left frontal lobes as well as the right temporal subdural hematoma was not seen in this particular study. Follow up to that study, a CTA of the head and brain with contrast was performed and this showed a stable low attenuation in the left front lobe. Given the history of trauma, this may represent a nonhemorrhagic contusion. It showed no intracranial hemorrhage at that particular time and the CTA exam basically demonstrated normal appearing cerebral vessels.

During her hospital stay, the patient experienced several episodes of agitation with increasing frequency and severity. Psychiatry was consulted and noted a previous diagnosis of bipolar disorder and schizophrenia in this patient a few years ago. The patient was re-initiated on a neuroleptic by psychiatry.

[REDACTED] CT of the brain without contrast

Focal area of hypoattenuation in the medial aspect of the left frontal lobe which is smaller than on prior study. This may represent a small area of infarct or ischemia secondary to the previous history of trauma from the motor vehicle collision.

[REDACTED] CT Report (Exhibit 3)

Old ischemic infarction in the left frontal lobe unchanged from 9/17/08.

Neurology Clinic (Exhibit 2, pp. 1- 6)

[REDACTED] – CI presents for left sided numbness more pronounced in the left lower extremity below knee. Pain in back and numbness and tingling feelings on the left side of the leg more in the left lower extremity. CI has been feeling some tiredness and fatigue lately.

PHYSICAL EXAMINATION: She does have some tenderness in the back of the neck. She can walk with mild dragging of her left foot. She was able to tandem walk and stand with toe and heel, but with difficulty. She does have decreased fine motor movements like tapping of the left foot and alternating hand movements decreased on the left side.

[REDACTED] – CI describes headaches as constant pressing pain on right side of head. She is complaining of pain around the eyes and she complains about hearing people who talk about her, being watched all the time and voices tell her that her life is over.

IMPRESSION: The patient does have weakness with numbness and an intracranial hemorrhage would justify her weakness and numbness in the left side and facial numbness on the right side. We would refer her to physical therapy and occupational therapy.

Psychiatric IME (Exhibit 3)

COMPLAINTS: Pt has been hearing voices for many years. The voices tell her different things. She has mood swings frequently with highs and lows. She does not sleep well or eat well. The patient has suicidal ideations off and on and has had attempts.

EMOTIONAL REACTON: The patient's mood was irritable. The patient's affect was blunted.

ADD'L INFO: The patient had a head trauma. The patient has problems with concentration and focusing. She has suicidal ideations off and on.

DX: Bipolar I disorder, mixed type, with psychosis; Rule out schizo-affective disorder; Diabetes mellitus, hypertension, obesity, hypercholesterolemia, closed head injury, history of CVA.

PROGNOSIS: Fair to guarded.

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

Federal regulations require that the department use the same operative definition 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 is not currently working. 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 F.2d 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 from hospital admissions showing a hospital admission [REDACTED] for a serious head injury. Claimant testified to physical and mental limitations that have continued to plague her since the collision. Claimant has been diagnosed with Bipolar I disorder, mixed type with psychosis. Therefore, the medical

evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant's impairments under step three.

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 will not support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders* was reviewed as follows:

Schizophrenic, Paranoid and Other Psychotic Disorders: Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
1. Delusions or hallucinations
 2. Catatonic or other grossly disorganized behavior;
 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; or
 - d. Emotional withdrawal and/or isolation;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace;
or
4. Repeated episodes of decompensation, each of extended duration

In this case, this Administrative Law Judge finds the Claimant is presently not disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed shows that the physical impairments do not meet the intent or severity of the listings.

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 you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Claimant has a previous head trauma and a history of hearing voices for several years. Claimant has bipolar disorder, hears voices daily and has suicidal thoughts several times a week. In addition to poor memory, concentration and focusing, Claimant testified that she has periods of incontinence and she will hide the evidence by throwing her soiled clothes into the garbage. It cannot be assumed that a failure to meet or equal one of the medical listings for mental impairments equates with the capacity to do at least unskilled work. The basic mental demands of competitive, remunerative, unskilled work include the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; make judgments that are commensurate

with the functions of unskilled work; respond appropriately to supervision, coworkers and work situations; and deal with changes in a routine work setting. POMS DI25020.010.

In determining an individual's Mental Residual Functional Capacity, the trier of fact must also look at what mental capacity is required for the different skill levels of work as follows:

1. Unskilled work needs little or no judgment to do simple duties;
2. Semiskilled work may involve detailed, but not more complex, duties and may require alertness and close attention.
3. Skilled work requires use of judgment or dealing with people, facts, figures or ideas at a high level of complexity.

20 CFR 416.968.

Claimant's physical problems included diabetes, hypertension and high cholesterol. Furthermore, Client is obese. As with any other medical condition, if obesity is a "severe" impairment alone or in combination with another medical determination physical or mental impairment(s), it can significantly limit an individual's physical or mental ability to do basic work activities. SSR 01-1p. For example, obesity affects the cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems. Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Because the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. *Id.*

Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone. The National Institute of Health Clinical Guidelines for Obesity defines three levels of obesity. Level I includes Body Mass Index (BMIs) of 30.0-34.9, Level II includes BMIs of 35.0-39.9 and Level III extreme obesity is considered over 40.0. Obesity at Level III represents a condition which

creates the greatest risk for developing obesity related impairments. The IME psychiatrist indicated on his report that the Claimant's weight was 314lbs and she was 5'4 in height. The Claimant's obesity measurement by her BMI may be calculated using the Center for Disease Control and Prevention Body Mass Index calculation, found at:

http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm, The formula for calculating BMI is as follows: Calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion factor of 703. This formula as applied to the Claimant's height and weight yields a BMI 53.9, or Level III obesity.

Social Security Ruling SSR-02 provides in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

The Administrative Judge finds that the Claimant's mental and physical impairments and limitations have a major effect upon Claimant's ability to perform even very basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems must be considered. In this case, the combination of Claimant's impairments results in severe impairment which limits Claimant's ability to work. 20 CFR 404.1529. Considering Claimant's medical limitations, this Administrative Law Judge finds that claimant's impairments render claimant unable to do even sedentary work. Claimant is, therefore, disabled from her previous employment and also from any other employment.

Accordingly, Claimant is disabled for the purposes of the programs. 20 CFR 404, Subpart P, Appendix 2, Rule 201.00(h).

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

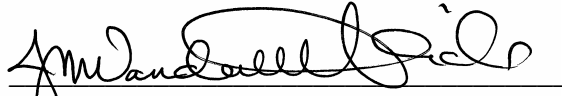
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA and SDA program as of May, 2008.

Therefore the department is ordered to initiate a review of the application of August 6, 2008, if not done previously, to determine claimant's non-medical eligibility. The department

shall inform the claimant of the determination in writing. The case shall be reviewed November, 2010.



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

Date Signed: 11/03/09

Date Mailed: 11/09/09

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.

JV/dj

cc:

