

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: 200920635
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 25, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on November 25, 2009.

ISSUE

Was the denial of claimant's application for MA-P, Retro MA-P and SDA for lack of disability correct?

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 applied for MA-P, and Retro MA-P on January 6, 2009
- (2) Claimant is 24 years old.
- (3) Claimant has a GED.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of a janitor, security guard, and cashier/clerk.
- (6) Claimant performed these jobs at a light and medium exertional level.
- (7) Claimant was hospitalized on [REDACTED] for a suicide attempt when claimant drank “a 1/5 of vodka.”
- (8) Claimant was hospitalized on [REDACTED] for a suicide attempt when claimant overdosed on Seroquel.
- (9) Claimant has been proscribed several medications to deal with his mental illnesses.
- (10) A Mental RFC assessment completed by claimant’s treating source stated that claimant had marked limitations in memory, the ability to sustain concentration, persistence, and pace, social interactions, and adaptation.
- (11) Claimant was considered markedly limited in 13 out of 20 categories.
- (12) On January 13, 2009, the Medical Review Team denied MA-P, Retro MA-P and SDA
- (13) On March 12, 2009, claimant filed for hearing.
- (14) On May 13, 2009, the State Hearing Review Team denied MA-P, Retro MA-P and SDA.
- (15) On November 25, 2009, a hearing was held before the Administrative Law Judge.
- (16) After the hearing, the record was extended to allow for the submission of more medical documentation.
- (17) Claimant submitted documentation.

(18) Claimant was represented at hearing by [REDACTED]

[REDACTED].

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).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of a history of mental illness that has more than a minimal effect on the claimant’s ability to do basic work activities. Claimant’s treating source and hospital records state that claimant’s abilities to understand, carry out, and remember even simple instructions are markedly limited.

In regards to the duration of claimant’s impairment, various treating sources and hospital records indicate that claimant has suffered from a number of mental affective disorders for approximately 8-9 years, since claimant was about 15 years old. The undersigned finds this evidence to be credible, and thus, claimant passes the second step of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant’s impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant’s impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding

of “not disabled”; if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant’s medical records contain medical evidence of an impairment that meets or equals a listed impairment. The great weight of the evidence of record finds that claimant’s impairment meets or equals the listings for mental disorders contained in section 12.04 (affective disorders).

Appendix 1 of Subpart P of 20 CFR 404, Section 12.04 has this to say about affective disorders:

12.04 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 are 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
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 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;

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 supportive living arrangement, with an indication of continued need for such an arrangement.

In order to meet or equal the listings for affective disorders, a claimant must meet or equal the criteria set forth in 12.04. After viewing the evidence of record, including treating source opinions, the undersigned believes that the evidence shows claimant has met the criteria for A and B. According to treating sources, claimant has lost 35 pounds in the time between his first suicide attempt on [REDACTED] and his second attempt on [REDACTED]. In addition, he has consistently complained of sleep disturbances, for which he was prescribed medication. Various treating sources have stated that claimant experiences feelings of guilt or worthlessness, difficulties concentrating or thinking, and thoughts of suicide. For these reasons, the undersigned finds that claimant meets the criteria for part A of the 12.04 listing for affective disorders.

In a DHS-49-E, Mental Residual Functional Capacity Assessment, treating sources found that claimant exhibited marked limitations in a number of areas. Of particular importance to meeting this listing, claimant's mental illness has resulted in marked restrictions of activities of daily living, marked difficulties in maintaining social functioning, and marked difficulties in maintaining concentration, persistence, or pace.

With regards to claimant's activities of daily living, claimant testified credibly that he does very few, if any, activities of daily living. Claimant is supported by his parents, who see to his essential needs. Claimant testified that he does not function outside of a highly supportive environment, and tends to "sleep all day". Claimant's medical records bear this out; hospitalization and psychological records paint a picture of a patient with extremely low levels of energy, unable to meet his most basic needs, which give further reinforcement to feelings of

frustration and apathy. Therefore, the undersigned believes that claimant is markedly impaired with regards to his activities of daily living.

With regard to claimant's memory and concentration, persistence and pace, claimant's treating source, through a DHS-49, testified that claimant is markedly impaired in 9 out of 11 categories. Treating source opinions are not to be discounted absent substantial medical evidence. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007). The opinions espoused by claimants treating source are well supported by the medical records in the file. Therefore, claimant is markedly limited with regard to concentration, persistence, and pace.

With regard to claimant's ability to maintain social functioning, claimant's treating source scored claimant as markedly limited in 2 of the five categories regarding social interactions. It should be noted though, that mental RFC evaluations are evaluations of the workplace only, while the category of social interactions must be viewed as a whole.

However, claimant's treating source also stated that claimant had a GAF of 45. Claimant's GAF has ranged far lower during his hospitalizations. A GAF of 45 is consistent with a serious impairment in social functioning. Claimant's medical records and his own testimony show a claimant that has severe difficulties in responding appropriately to social situations, has trouble interacting with others, is socially withdrawn, and rarely leaves the house. All social factors are consistent with a claimant who is markedly impaired with regards to social interaction. Therefore, the Administrative Law Judge holds that claimant is markedly impaired with regards to social interactions.

As claimant is markedly impaired in 3 of the 4 B criteria of listing 12.04, the undersigned holds that he meets the B criteria of the listing. As claimant meets both the A and B criteria of the listing, the undersigned holds that he meets the criteria of listing 12.04.

As claimant meets the criteria of 12.04, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 12.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed above, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA program. Therefore, the decisions to deny claimant's application for MA-P and Retro MA-P were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P, Retro MA-P application and award required benefits, provided claimant meets all non-medical standards as well. The

Department is further ORDERED to initiate a review of claimant's disability case in March, 2011.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/28/10

Date Mailed: 07/30/10

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.

RJC/dj

cc:

