

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.: 2009-25341
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 2, 2009
Wayne County DHS (18)

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 held in Taylor, Michigan on Monday, November 2, 2009. The Claimant appeared and testified, along with his father, [REDACTED]. The Claimant was represented by [REDACTED] from [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes continued entitlement to the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefits?

FINDINGS OF FACT

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

1. On January 28, 2008, the Claimant submitted a public assistance application seeking MA-P and SDA benefits.

2. On April 24, 2008, the Medical Review Team (“MRT”) found the Claimant disabled based on Listing 12.03 for purposes of MA-P and SDA benefits with a review date of January 2009. (Exhibit 1, pp. 31, 32)
3. In September of 2008, the Claimant was committed involuntary to a psychiatric ward. (Exhibit E, pp. 64 – 71)
4. In January 2009, the Claimant’s continued program eligibility was reviewed.
5. On February 9, 2009, the Probate Court appointed a guardian for the Claimant, a legally incapacitated individual. (Exhibit D, p. 2)
6. On March 17, 2009, the MRT deferred the disability determination requesting a psychiatric evaluation be scheduled. (Exhibit 1, p. 3)
7. On April 8th, the Claimant attended the department ordered psychiatric examination. (Exhibit 1, pp. 4 – 7)
8. On April 24, 2009, the MRT determined the Claimant was no longer met the criteria for MA-P and SDA benefits. (Exhibit 1, pp. 3, 4)
9. On April 27, 2009, the Department notified the Claimant that his MA-P and SDA benefits were scheduled for closure effective May 9, 2009. (Exhibit 1, p. 1)
10. On May 7, 2009, the Department received the Claimant’s written request for hearing.
11. On June 25, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
12. The Claimant has not alleged any physical disabling impairment(s).
13. The Claimant’s alleged mental disabling impairments are due to Schizoaffective disorder.
14. The Claimant’s impairment(s) have lasted continuously for a period of 12 months or longer.

15. At the time of hearing, the Claimant was 37 years old with a [REDACTED] birth date; was 5' 9" and weighed 260 pounds.

16. The Claimant is a high school graduate with seasonal work experience as a bell ringer.

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)

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR

416.994(b)(5)(i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether

despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii)

Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work;
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperated;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1. In this case, the Claimant was previously found to meet Listing 12.03. In support of this claim, several older records from 2007 were submitted, some of which, were likely used in the initial disability approval.

On [REDACTED], the Claimant was admitted to hospital after an altercation with his father. Upon arrival, the Claimant was found to be delusional, agitated, anxious, displaying flight of ideas and auditory hallucinations. The suicide assessment tool found the Claimant to be a high risk with symptoms of psychosis. The Claimant's speech was pressured and he was paranoid, very guarded, and angry. The admitting diagnosis was schizophrenia, paranoid type with a Global Assessment Functioning ("GAF") of between 10 and 15. The following day, the Claimant was found to be psychotic, delusional, and paranoid with marked ideas of reference and delusional thinking. The Claimant did not think he was ill. The court was petitioned for an involuntary commitment. On [REDACTED], the Claimant was markedly delusional, paranoid, psychotic, and rambling with looseness of association.

On [REDACTED], a Clinical Psychologist authored a letter recommending guardianship be pursued to ensure the Claimant's safety and welfare.

On [REDACTED], the Claimant attended a follow-up psychiatric evaluation. The Claimant was diagnosed with schizophrenia, paranoid type with a Global Assessment Functioning of 45.

On [REDACTED], the Probate Court appointed a guardian for the Claimant, a legally incapacitated individual.

On [REDACTED], the Claimant attended a department ordered psychiatric evaluation. The Claimant was found with no psychiatric diagnosis but a history of schizophrenia was noted. The Global Assessment Functioning ("GAF") was 65.

The Claimant asserts mental disabling impairments due to schizophrenia and/or schizoaffective disorder. 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 The severity requirement is measured according to the functional limitations imposed by the medically determinable mental impairment. 12.00C Functional limitations are assessed in consideration of an individual's activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *Id.*

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning. 12.03 The required level of severity for these disorders is 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; or
 - 2. Catatonic or other grossly disorganized behavior; or;

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

4. Emotional withdrawal and/or isolation;

AND

B. Resulting in a least two of the following:

1. Marked restriction of activities of dialing 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 durations

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic 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 changed 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, since the Claimant's approval, the record documents continual treatment for the Claimant's schizophrenia which included involuntary commitment and appointment of a guardian certifying the Claimant as a legally incapacitated adult. Further, the records document delusions, hallucinations, disorganized behavior as well as marked restrictions of activities of

daily living and inability to maintain concentration. During the hearing, the Claimant appeared to be confused, rambled, had long hair, nails, and beard, and was not able to answer questioning. The Claimant's GAF in September was between 10 and 15. Under the facts presented, it is found that the Claimant continues to meet, or is the equivalent thereof, a listed impairment within 12.00, specifically 12.03, therefore the Claimant's disability is found to have continued with no further analysis required.

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, the Claimant is found disabled for purposes of continued entitlement for Medical Assistance ("MA-P") benefits thus is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of continued State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the redetermination application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.
3. The Department shall supplement for any lost benefits the Claimant 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 December 2010 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 11/25/09

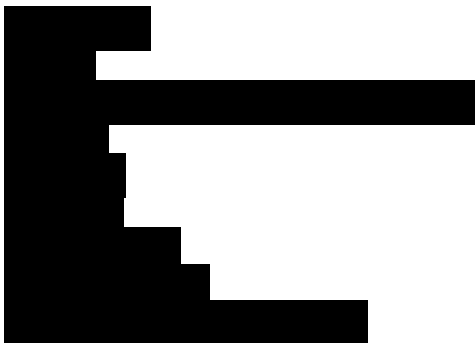
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative hearings will not order a rehearing or reconsideration 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.

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