

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: 200930566
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 7, 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 October 7, 2009.

ISSUE

Was the denial of claimant's application for 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 SDA on May 6, 2009.
- (2) Claimant is 48 years old.
- (3) Claimant has a 9th grade education and a Nurse Assistant Certificate, but the certificate has since expired.

- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of a nursing assistant, a home health aid, and a general laborer.
- (6) Claimant has been diagnosed with depression, schizoaffective disorder, and left wrist and hand injury.
- (7) Claimant has a history of depression and auditory hallucination.
- (8) In 2007, claimant was robbed and assaulted, resulting in injury to her left hand and wrist.
- (9) On [REDACTED], claimant underwent surgery at [REDACTED] for left distal radius fracture. Claimant had open reduction and internal fixation of left distal radius and placement of an external fixator.
- (10) Following the surgery, claimant continued to experience chronic pain in her left hand and wrist. Claimant takes Tylenol and Motrin as needed for the pain.
- (11) A form DHS-49, Medical Examination Report, was completed by claimant's treating source on [REDACTED].
- (12) Claimant's mental capacity is limited. Claimant has comprehension and memory limitations. Claimant also has some functional limitations, including her ability to stand and/or walk and her ability to lift/carry.
- (13) On [REDACTED], claimant underwent a psychiatric evaluation at the [REDACTED] [REDACTED].
- (14) Claimant suffered from typical symptoms of depression, including crying spells, sadness, insomnia, nightmares, and irritable temper. Claimant also suffered from symptoms of schizoaffective disorder, including auditory hallucinations.

- (15) Claimant's recent memory is impaired. Claimant also exhibited poor decision making and impulse control.
- (16) Claimant was given a GAF of 45 with a guarded prognosis.
- (17) On [REDACTED], a form DHS-49D was completed by claimant's treating source. Claimant was diagnosed with schizoaffective disorder. Claimant was alert, attentive and cooperative; however, claimant was suspicious and paranoid.
- (18) Claimant was given a GAF of 45.
- (19) On [REDACTED], an independent Department examiner completed an internal medicine report.
- (20) The independent Department examiner states in the report that claimant exhibited headaches, blurred vision, poor memory, depression, and left hand pain. Claimant does not require an assistive device for ambulation. However, claimant only retains grip strength of 3/5 for her left hand and claimant is unable to fully close her left hand.
- (21) On June 24, 2009, the Medical Review Team denied MA-P, Retro MA-P, and SDA, stating that claimant's impairments will not prevent employment for 90 days or more.
- (22) On June 29, 2009, claimant filed for hearing.
- (23) On August 10, 2009, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that claimant retained the capacity to perform a wide range of light unskilled work.
- (24) On October 7, 2009, a hearing was held before the Administrative Law Judge.

CONCLUSIONS OF LAW

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 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 she 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 mental impairment that has more than a minimal effect on the claimant’s ability to do basic work activities. Claimant’s treating source, as well as an independent Department examination, all state that claimant has poor memory. Furthermore, the great weight of the evidence shows that claimant’s mental disorders provide more than minimal difficulty in understanding and remembering instructions and maintaining social function. Finally, claimant has provided demonstrable evidence of a serious mental condition that severely limits her ability to maintain social interaction. Claimant reported experiencing paranoid delusions, visual and auditory hallucinations, and mood swings since the age of 7 or 8 years old. Claimant thus easily passes step two of our evaluation.

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.

After considering the listings contained in Section 1.00 (Musculoskeletal), the Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. A listings disability finding for fracture of an upper extremity requires, nonunion of a fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management, directed toward restoration of functional use of the extremity, and such function was not restored or expected to restore within 12 months of onset. None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the above.

However, the great weight of the evidence of record finds that claimant's mental impairment meets or equal the listings for mental impairments contained in section 12.00 (Mental Impairments).

Appendix 1 of Subpart P of 20 CFR 404, Section 12.00 has this to say about mental disorders:

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings...

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the diagnostic description, that is manifested by the medical findings in paragraph A...

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 functioning; concentration, persistence, or pace; and episodes of decompensation.

Where we use "marked" 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, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis. See §§ 404.1520a and 416.920a.

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 is met when the requirements in both A and B 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...
 - c. Sleep disturbance; or...
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or...
 - i. Hallucinations, delusions, or paranoid thinking...

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 order to meet or equal the listings for mental impairment, a claimant must either meet or equal the recommended listings contained in both the A and B criteria, or meet or equal the listings in the C criteria. After examination of the C criteria, the undersigned holds that claimant does not meet this listing. However, a careful examination of claimant's medical records, both supplied from a treating source, and from an independent Department examiner, show claimant meets both the A and B criteria.

Claimant's psychological reports show documented persistence of claimant's depression and schizoaffective disorder. The documented medical evidence paints a portrait of a socially withdrawn individual. Claimant admitted to sleep disturbance, receiving only 4 hours of sleep per night, which is frequently plagued by nightmares. Claimant's records also show an individual suffering from paranoia and auditory hallucination, with frequent thoughts of guilt and worthlessness. Claimant reported hearing voices telling her that she is stupid and that people are out to get her. Claimant also reported talking to herself. Claimant's treating source gave claimant a GAF of 45 with a guarded prognosis. Therefore, the undersigned holds that claimant meets or equals the listings found in the A criteria.

With regards to claimant's activities of daily living, the testimony and evidence of record show that while claimant has minimal to no difficulties in maintaining her daily activities. Claimant does participate in household chores, including washing dishes and doing the laundry. Claimant also will cook for herself. Claimant is capable of self-grooming. Claimant testified

that she does not read, but will listen to the radio and watch TV. The Administrative Law Judge finds that claimant has little to no difficulties in maintaining her activities of daily living.

Claimant's difficulties in maintaining concentration, persistence and pace are another matter. *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. These limitations must be of such an extent that claimant is held to be markedly impaired with regard to concentration persistence and pace. On mental status examinations, concentration is assessed by tasks such as having you subtract serial sevens or serial threes from 100. In psychological test of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

On [REDACTED], claimant's treating source completed a psychiatric evaluation. While claimant was not asked during the psychiatric evaluation to subtract serial sevens or serial threes from 100, claimant was asked to recall objects after 3 minutes. Claimant performed poorly in completing this task; claimant was only able to recall 1 out of three objects after 3 minutes. This indicates that claimant has poor memory, which negatively affects claimant's ability to learn new work procedures, remember instructions, and concentrate on assigned tasks. Additionally, claimant's treating source reported that claimant was suspicious and paranoid with racing thoughts, which affects her ability to work with others, but also affects claimant's ability to concentrate and complete finish assignments. Consistent with this assessment, claimant's treating source opined that claimant's recent memory is severely impaired. On [REDACTED], another treating source completed a DHS-49, Medical Examination Report, and reported that claimant has severe comprehension and memory limitations. These limitations appear to rise to

the level of markedly impaired; therefore, the undersigned holds that claimant is markedly limited in maintaining concentration, persistence and pace.

Claimant has no listed episodes of decompensation, and therefore, does not meet those criteria.

Finally, *social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR 404 App 1, Sub P, 12.00 (C)(2). The listings do not limit social functioning to the work place. Social functioning is specifically defined as a general ability to maintain social functioning with individuals. Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. A marked limitation in social functioning is not defined by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function.

Claimant reported experiencing auditory hallucinations; claimant hears voices that tell her that she is stupid and people are out to get her. Claimant also reported that she only receives short weekly visits from family members. Claimant's treating sources noted that claimant was suspicious and paranoid during her psychiatric evaluations. More importantly, claimant has been given a GAF of 45 by her treating source. A GAF between 41-and 50 is generally defined as having a serious impairment in social, occupational, or school functioning. This GAF score would be consistent, considering the record as a whole, with an individual with a serious impairment in social functioning.

Therefore, when considering claimant's psychiatric record, including claimant's GAF scores, the Administrative Law Judge is able to hold that claimant is markedly impaired in social functioning.

As claimant is markedly impaired in concentration, persistence and pace, and social functioning, the Administrative Law Judge holds that the claimant meets the B criteria in the listings for mental impairments.

As claimant meets both the A and B criteria, 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 and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA 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 and SDA 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 August, 2011.



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

Date Signed: 07/28/10

Date Mailed: 08/04/10

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:

