

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: 200934521
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 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 4, 2009.
- (2) Claimant is 60 years old.
- (3) Claimant has a high school education.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of a server, a bartender, and an officer clerk.
- (6) Claimant terminated her last employment as a server because of concentration problems and harassment by customers.
- (7) Claimant has a history of bipolar disorder.
- (8) In 1974, claimant was hospitalized at [REDACTED] for 6 weeks by her psychiatrist and received 12 electroconvulsive therapy (ECT) treatments.
- (9) Claimant received Supplemental Security Income from 1974-1985 for disability due to bipolar disorder.
- (10) On [REDACTED], claimant's treating source completed an Adult Psychosocial Assessment.
- (11) Claimant reported episodes of depression with low motivation, apathy, decreased energy, racing thoughts, insomnia, and anxiety with sporadic panic attacks. Claimant had a blunted affect and a down mood.
- (12) Claimant received a GAF of 50.
- (13) On [REDACTED], another treating source completed a Psychiatric Evaluation. Claimant reported having racing thoughts, insomnia, extreme anxiety, decreased comprehension, and memory problems.
- (14) Claimant had a restricted affect and a depressed mood.
- (15) A form DHS-49, Medical Examination Report, was completed by another treating source on [REDACTED].
- (16) Claimant has little to no functional capacity limitations.

- (17) Claimant retains the capacity to lift up to 20 lbs frequently, and should never lift more than 20 lbs. Claimant has no limitations in standing and/or walking, sitting, using her hands/arms and her feet/legs.
- (18) Claimant's mental health is in a deteriorating condition.
- (19) On July 1, 2009, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing other work.
- (20) On July 22, 2009, claimant filed for hearing.
- (21) On September 17, 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 medium unskilled work.
- (22) On November 25, 2009, a hearing was held before the Administrative Law Judge.
- (23) Claimant was represented by [REDACTED].

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 sources all state that claimant has poor memory and problems concentrating. 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. Claimant testified at the hearing that she terminated her most recent employment as a server because of concentration problems. Claimant reported that she spends most of her time alone in her apartment. 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.

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...
 - e. Decreased energy; or...
 - g. Difficulty concentrating or thinking; or...

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 bipolar disorder. The documented medical evidence paints a portrait of a socially withdrawn individual. Claimant reported spending most of her time alone in her home. Claimant admitted to sleep disturbance, receiving only 5 hours of sleep per night with frequent waking and nightmares. Claimant's records also show an individual suffering from depression and anxiety. In an Adult Psychosocial Assessment, dated [REDACTED], claimant's treating source noted that claimant suffers from depression with reduced daily functioning/staying in bed, apathy, and periods of elevated mood with insomnia. Claimant's treating source also noted that claimant experiences "blank outs". Claimant's treating source gave claimant a GAF of 50. 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 claimant has minimal to no difficulties in maintaining her daily activities. Claimant lives alone and does engage in general cleaning when she is mentally and physically capable of doing so. Claimant also will cook for herself; however, cooking is limited to simple meals, such as microwave dinners. Claimant is capable of self-grooming. Claimant testified that she does not read, but will listen to the radio or watch TV. Claimant engages in weekly shopping trips to a neighborhood store for food. Therefore, 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. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

Claimant's treating sources opined that claimant has poor memory and trouble concentrating. On [REDACTED], claimant's treating source completed an Adult Psychosocial Assessment and noted that claimant "blanks out" at times and can easily get lost and has trouble concentrating. Claimant testified during her hearing that she is capable of driving; however, claimant will not drive far, because she will get lost. On [REDACTED], another treating source completed a psychiatric evaluation. In the evaluation, the treating source noted that claimant suffers from insomnia, extreme anxiety, depression, decreased comprehension and severe memory problems.

Each record shows that claimant has far more than moderate limitations in maintaining concentration, persistence, and pace; the record as a whole, both by treating sources, and independent evaluations show that claimant has marked limitations. 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.

Claimant reported spending the majority of her time alone in her home. Claimant also reported that sometimes others will help her shop, because she will experience panic attacks when surrounded by many people. More importantly, claimant has been given a GAF of 50 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: 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:

