

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.: 2009-36705
2010-17539

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:
November 5, 2009
Macomb County DHS (36)

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 telephone hearing was conducted from Detroit, Michigan on Thursday, November 5, 2009. The Claimant appeared and testified, along with her case manager, [REDACTED]. [REDACTED] and [REDACTED] appeared on behalf of the Department. During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence.

The Claimant is currently represented by [REDACTED]. The additional information was received, reviewed, and entered as Exhibit 4. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance (“MA”) and State Disability Assistance (“SDA”) programs?

FINDINGS OF FACT

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

1. The Claimant submitted applications for public assistance seeking Medical Assistance (“MA-P”) and State Disability Assistance (“SDA”) benefits on March 17, 2009 and October 13, 2009.
2. On June 12, 2009 and October 30, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, pp. 1, 3, 4)
3. On June 20, 2009 and November 4, 2009, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 1, p. 2)
4. On July 8, 2009 and January 23, 2010, the Department received the Claimant’s written Request for Hearing. (Exhibit 2)
5. On September 29, 2009 and February 19, 2010, the State Hearing Review Team (“SHRT”) determined that the Claimant was not disabled. (Exhibit 3)
6. The Claimant’s alleged physical disabling impairment(s) are due to carpal tunnel syndrome, chronic back pain, asthma, high blood pressure, and seizure disorder.
7. The Claimant’s alleged mental disabling impairment(s) are due to bipolar disorder.
8. At the time of hearing, the Claimant was 44 years old with a [REDACTED] birth date; was 5’ in height; and weighed approximately 118 pounds.

9. The Claimant graduated from high school under a special education program and has a work history as a general laborer.

CONCLUSIONS OF LAW

As a preliminary matter, the Claimant submitted two applications with two hearings scheduled. The Claimant's authorized representative withdrew the second hearing request and agreed to have this decision cover both applications.

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"), formerly 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")/Bridges Administrative Manual ("BAM"), the Program Eligibility Manual ("PEM")/Bridges Eligibility Manual ("BEM"), and the Program Reference Manual ("PRM")/Bridges Program Glossary ("BPG").

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 416.927

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)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four.

20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas

(activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As discussed above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

The Claimant was admitted to the Psychiatric Unit from [REDACTED] through [REDACTED]

On [REDACTED], the Claimant attended a psychiatric evaluation. The diagnoses were bipolar I disorder, most recent episode mixed, severe with psychosis, panic disorder with agoraphobia, polysubstance abuse, and personality disorder. The Claimant's GAF was 20.

On [REDACTED], the Claimant was involuntarily admitted to the Psychiatric Unit. On [REDACTED], the Probate Court entered a Petition for Hospitalization due the Claimant's mental condition and suicidal ideations. A history of seeking opiate pain medication was noted. The admitting diagnoses were bipolar disorder, depressed without psychotic features, poly-

substance abuse and a Global Assessment Functioning (“GAF”) was 20. The Claimant was prescribed Tegretol and Haldol and discharged on August 5, 2008 with a GAF of 42.

On [REDACTED], the Claimant received treatment for a fractured nose.

On [REDACTED], the Claimant attended a psychiatric evaluation. The diagnoses remained unchanged finding her with bipolar I disorder, most recent episode mixed, severe with psychosis, panic disorder with agoraphobia, polysubstance abuse, and personality disorder. The Claimant’s GAF was 20.

On [REDACTED], the Claimant had an abnormal mammogram.

On [REDACTED], the Claimant was treated for bronchitis.

On [REDACTED], a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in her ability to remember locations and work-like procedures; understand, remember, and carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary routine without supervision; complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; and set realistic goals or make plans independently of others.

On [REDACTED], a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in her ability to remember locations and work-like procedures; understand, remember, and carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary

routine without supervision; complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; and set realistic goals or make plans independently of others.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnosis was bronchitis with a history of bipolar disorder, gastritis, panic disorder, fatigue, CTS, and sleep apnea. No physical limitations were noted however limitations with the Claimant's ability to comprehend and remember were noted as well as a reference to the Claimant's psychiatric evaluation.

On [REDACTED], the Claimant was treated for acute stomatitis.

On [REDACTED], the Claimant presented to the emergency room with head pain. The Claimant was treated and discharged with the diagnosis of tension headache.

On [REDACTED], the Claimant presented to the emergency room with complaints of back pain. The Claimant was treated and discharged.

On [REDACTED], the Claimant attended a psychiatric evaluation. Continuing treatment was recommended based on the Claimant's diagnosis of Bipolar I Disorder with significant functional disability of sufficient duration with the need of medication to reduce symptoms. The Claimant's history of substance abuse was documented as well as her incarcerations (15 times) "usually drug related." The diagnoses were bipolar I disorder, most recent episodes mixed, severe psychosis, secondary to panic disorder with agoraphobia, and borderline personality disorder. The Claimant's Global Assessment Functioning ("GAF") was 20 on page 11 and 65 on page 18 of the report. The Claimant's medication and therapy compliance was also noted. This same report was also signed on [REDACTED].

On [REDACTED], the Claimant presented to the emergency room via ambulance with difficulty with gait, balance, and falling. The Claimant also had severe slurred speech. The physical examination was suggestive of toxic encephalopathy with a history of taking excessive Tegretol (for bipolar disorder). X-rays of the lumbar spine demonstrated no evidence of significant degenerative changes with mild scoliosis. Osteophyte formation noted at T11-12. The Claimant was discharged the following day with the diagnoses of unsteady gait and slurred speech

On [REDACTED], the Claimant was treated for a finger fracture.

On [REDACTED], the Claimant attended a psychiatric evaluation. The Claimant's condition was noted as deteriorating. The diagnoses were bipolar I disorder, most recent episodes mixed, severe psychosis, secondary to panic disorder with agoraphobia, and borderline personality disorder. The Claimant's Global Assessment Functioning ("GAF") was 20.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling

impairments carpal tunnel syndrome, chronic back pain, asthma, high blood pressure, seizure disorder, and bipolar I disorder.

Listing 1.00 (musculoskeletal system impairments), Listing 3.00 (respiratory system impairments), Listing 4.00 (cardiovascular system), and Listing 11.00 (neurological impairments), were considered in light of the objective evidence. Ultimately, it is found that the objective medical documentation is insufficient to meet the intent and severity requirement of a listed impairment within these listings.

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.*

Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders is met when the requirements of 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 distractability; 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 on 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 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 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 this case, the Claimant's bipolar disorder is well documented to include involuntary psychiatric hospitalizations. The Claimant medication compliance is noted however there is also documentation establishing the Claimant's history of polysubstance abuse. The Claimant was found markedly limited in her ability to remember locations and work-like procedures; understand, remember, and carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary routine without supervision; complete

a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; and set realistic goals or make plans independently of others. The Claimant's GAF ranged from 20 to 65, with the most recent score of 20 in January 2010. A GAF of 20 means there is some danger of hurting self or others or the occasional failure to maintain minimal personal hygiene or a gross impairment in communication. Further, the Claimant's condition was listed as deteriorating noting the most recent episode included severe psychosis secondary to panic disorder and agoraphobia. Based upon the submitted record, it is found that the Claimant's mental impairment(s) have lasted, or are expected to last, continuously for a period of 12-months or longer therefore the impairment(s) meets or is the equivalent thereof, a Listed impairment within 12.00, namely 12.04. Accordingly, the Claimant is found disabled at Step 3 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 BAM, BEM, and BPG. 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 some circumstances benefit payments can, or must, be restricted to someone other than the individual (program group). BAM 420 A protective payee is a person/agency selected to be responsible for receiving and managing the cash assistance on behalf of the individual (program

group) as a third party. *Id.* Restricted payments are required in any of the following circumstances:

- Court-ordered shelter arrearage collection
- Third-party resource disqualification
- Minor parent
- Substance Abuse
- Client convicted of a drug-related felony
- Money mismanagement
- A child(ren) receiving FIP has a legal guardian
- Eviction or threatened eviction

Id. Restricted payment status is reviewed when appropriate but at least at every determination.

Id. The client has the right to request and be granted a review of the restricted payment status every six months. *Id.* An individual (group) may request a hearing to dispute a decision to begin or continue restricted payments or dispute the selection of a protected payee. *Id.* Restricted payments are continued until the hearing matter is resolved. *Id.*

In this case, the Claimant is found disabled for purposes of the Medical Assistance (“MA-P”) program, therefore the Claimant’s is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

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

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the March 17, 2009 application to determine if all other non-medical criteria are

met and inform the Claimant and her authorized representative of the determination.

3. The Department shall, in light of the Claimant's history of polysubstance abuse, evaluate the need for a protective payee in accordance with department policy.
4. The Department shall supplement for any lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
5. The Department shall review the Claimant's continued eligibility in April 2011 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 4/2/2010


Date Mailed: 4/2/2010

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.

CMM/jlg

cc:

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