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: 2009-3687
Issue No: 2009/4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
January 21, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on January 21, 2009. Claimant personally appeared and testified. He was assisted by [redacted], a patient advocate from [redacted].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA) and State Disability Assistance (SDA) eligibility standards?

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 is a 40-year-old high school drop-out with an extensive prison record, who spent many of his formative years in Boystown due to childhood orphan status.

(2) Claimant was in Special Education classes at [redacted]; he eventually obtained a GED, but he has no relevant work history.

(3) Claimant's mental health history is positive for multiple suicide attempts, most recently in [redacted], when he was admitted via the [redacted] after smashing his car into a tree head-on (Department Exhibit #1, pg 11).

(4) On [redacted], claimant was assisted in filing a disability-based MA/SDA application requesting an allowance based on combination mental and physical impairments.

(5) During claimant's most recent psychiatric hospitalization, his participation was very much limited because of his physical condition (recurrent vomiting) and paranoid thoughts, but toward the end of his ten day stay [redacted]) he was able to finish his meals for the first time (Department Exhibit #1, pgs 11 and 30-31).

(6) Claimant's Global Assessment Function (GAF) at discharge was 20 and his prognosis was guarded; referral to outpatient counseling at [redacted] was made; Claimant's Diagnosis: Major Depression, Recurrent with Paranoid Features (Department Exhibit #1, pgs 11 and 16).

(7) Claimant has no permanent residence; he rotates among acquaintances and homeless shelters; as of the January 21, 2009 hearing date, claimant was staying in someone's garage.

(8) Claimant's sleep is poor, his appetite is poor, he has racing thoughts, he is seclusive, isolative, paranoid, uncooperative and easily irritated (Department Exhibit #1, pg 30).

(9) At hospital discharge in [redacted] the treating mental health specialist noted:

> The patient is correctly oriented to all spheres and maintained cooperative attitude. Affect is constricted but increased in intensity. Mood was that of heightened dysphoria marked by feelings of inertia, apathy, anhedonia, as well as global and pervasive pessimism and suicidal preoccupation. Thought progressed without blocking, there were ideas of reference, influence, delusion and persecution. No phobias or obsessions. The power of concentration and attention span decreased. Abstract thinking capacity, reasoning ability and general fund of knowledge is limited. Insight to problem is present but superficial. Judgment under further stress would be unpredictable (Department Exhibit #1, pg 16).

(10) At claimant's hearing on January 21, 2009, his case manager from [redacted] noted increased services are currently being provided since claimant started treatment in [redacted], due to his increased psychiatric symptoms and overall instability.

(11) Claimant's current psychotropic medications ([redacted]) are not effective in controlling his ongoing major depression, per his caseworker.

(12) Claimant says he hates all people; his primary daily activity is sitting in the garage and waiting to die; he eats sporadically at the city missions and the homes of acquaintances (See also Finding of Fact #7 above).

(13) Claimant's case manager from [redacted] notes claimant's written and verbal comprehension skills are significantly compromised, he has no ability to use judgment or reason effectively, he demonstrates significant, volatile anger episodes, and he hates all authority figures.

(14) Claimant has an extensive substance abuse history; his risk of relapse is high based on numerous rehabilitation attempts with no success, all being court-ordered or by parole condition, with none initiated by claimant's choice (Client Exhibit A, pg 3).

(15) Claimant says the demon in him wants him to die, wants him to kill himself (Client Exhibit A, pgs 4 and 7).

(16) In addition to ongoing major depression and paranoia, claimant's mental health treatment records verify ongoing low-self esteem, low-self worth, insomnia and suicidal ideation (Client Exhibit A, pg 7).

(17) A Mental Residual Functional Capacity Assessment (DHS-49E) completed by [redacted], notes claimant is moderately or markedly limited in all four areas of mental health functioning required to be assessed during the disability determination process (Client Exhibit D, pgs 5 and 6).

(18) An independent psychological evaluation done in [redacted], notes claimant was first prescribed psychotropic medication [redacted] as a child; he stopped taking it when he ran away from [redacted] (Department Exhibit #1, pg 4).

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).

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 applicable federal regulations state:

> "Disability" is:
>
> ...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.
>
> ...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).
>
> Medical findings consist of symptoms, signs, and laboratory findings:
>
> (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
>
> (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
>
> (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.
>
> Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

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. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

...Where "marked" is used 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, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively, and on a sustained basis. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

We do not define “marked” by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

We do not define “marked” by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...The context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness, and sustainability. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...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. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

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). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all

> relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

Claimant's psychiatric history and his current need for continued psychiatric treatment is extensively documented in the records submitted to date, as well as in the credible hearing testimony. Furthermore, while claimant's sporadic relapse into illicit drug use also is extensively documented, this Administrative Law Judge finds it is not material because she is convinced the severity and longevity of claimant's mental/emotional impairments would prevent him from obtaining and/or keeping gainful employment even if he permanently stopped using marijuana and/or cocaine immediately.

Claimant has established deeply engrained, marked limitations in normal social functioning and extensive maladaptive behaviors that would prevent any success in the competitive work force. In fact, claimant's documented constellation of symptoms meets Listing 12.04(A) and (B), even without consideration of the residual physical symptoms he reports he has suffered since being viciously mauled by two pit bulls in [redacted]. As such, the department's denial of claimant's MA/retro-MA/SDA application simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant is not disabled under the governing regulations.

Accordingly, the department's denial of claimant's May 14, 2008 MA/retro-MA/SDA application is REVERSED and it is Ordered that:

(1) The department shall process claimant's disputed application and award him all the benefits he is entitled to receive thereunder.

(2) The department shall review claimant's mental/emotional condition for improvement in [redacted].

(3) The department shall obtain all current treatment notes, progress reports, etc. at the time of review.

(4) The department shall appoint a Protective Payee to manage claimant's monthly cash grant (SDA) due to his high risk of illicit substance abuse relapse.

(5) CLAIMANT SHOULD BE AWARE THAT FAILURE TO FOLLOW HIS TREATMENT PLAN MAY RESULT IN THE DENIAL OF CONTINUED BENEFITS AT REVIEW.

/s/_____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed:_[redacted]_____

Date Mailed:_[redacted]_____

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 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.

MBM/db

cc: [redacted]