

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: 2009-4817
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 telephone hearing was held on March 17, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services properly determine that Claimant no longer met the disability standard for State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On December 23-27, 2007, Claimant did inpatient psychiatric treatment at [REDACTED] [REDACTED] (Department Exhibit # 58). The discharge summary states Claimant: was admitted to the inpatient psychiatric unit expressing suicidal ideations; was stabilized with antipsychotic and antidepressant medication; and improved rapidly. The axis I

diagnosis was bipolar disorder, polysubstance dependency, and post traumatic stress disorder.

(2) On April 3, 2008, New Passages conducted a psychiatric evaluation (Department Exhibit # 47-51) Claimant diagnoses were bipolar disorder, polysubstance abuse, and antisocial disorder.

(3) On April 23, 2008, Claimant was initially approved for State Disability Assistance (SDA) by the Medical Review Team. Claimant had a medical review due in August, 2008.

(4) On [REDACTED], [REDACTED] conducted a mental status examination on Claimant (Department Exhibit # 6-9). It was concluded that Claimant's ability to perform work related activities would only be moderately impaired. It was also the Doctor's impression that Claimant was magnifying symptoms and under-representing his abilities. The Doctor felt that Claimant's motivation to work and take directions from others or tolerate customers was low, but that Claimant seems capable of doing so.

(5) On [REDACTED], a mental status examination was conducted by [REDACTED] [REDACTED] (Department Exhibit # 3-5). The diagnosis was bipolar disorder, antisocial personality disorder and a history of alcohol abuse and drug dependency. The Doctor recommended that Claimant be involved in outpatient treatment to reduce psychiatric symptoms, stabilize daily functioning, address substance abuse issues, and monitor assaultive potential.

(6) On October 1, 2008, the Department of Human Services Medical Review Team reviewed Claimant's medical information and determined that Claimant was not disabled.

- (7) On October 7, 2008, Claimant was sent a notice of case action stating his State Disability Assistance (SDA) case would close on October 21, 2008.
- (8) On October 24, 2008, Claimant submitted a request for hearing.
- (9) On December 3, 2008, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled.
- (10) Claimant is a 31 year-old male. Claimant is 72 inches tall and weighs approximately 260 pounds. Claimant's formal education consists of a GED.
- (11) Claimant has past relevant work in unskilled work at a restaurant, in construction, as a laborer, and as a bouncer.
- (12) Claimant last worked in 2006 as a bouncer. Claimant reports he cannot work at any job because he is unable to get along with others.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (PRM).

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. The purpose of the review is to determine if your medical condition still meets the Social Security Administration disability standard. There are two main factors used in deciding whether your disability continues. One is your current medical condition. The other is whether you can engage in any substantial gainful activity. 20 CFR 416.994

In evaluating whether your disability continues any current work activities, any medical improvement in your previous impairments, and the severity of your current impairment(s) are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that you are unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The starting point of the review is to determine if you are currently engaged in substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, that fact establishes that you are capable of working and you are no longer disabled.

Claimant currently lives with his mother and her significant other. Claimant testified that he is not employed and spends the majority of his time around the house watching TV. Claimant is not engaged in substantial gainful activity.

If you are not engaged in substantial gainful activity an evaluation is done using the evidence in the record. The sequential seven step evaluation is contained in 20 CFR 416.994(b)(5).

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; *i.e.*, whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see [§416.921](#)). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with [§416.960](#). That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

STEP 1

At this step it is determined whether you have an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20. If your impairment or combination of impairments meet or equal the severity of an impairment listing, your disability will be found to continue.

In order to make this determination the evidence showing your current medical condition must be evaluated. Claimant asserts continuing disability based upon depression and anxiety. Evidence in the record of Claimant's current medical condition includes: a mental status examination dated [REDACTED]; and a mental status examination dated [REDACTED].

The mental status examination dated [REDACTED] by [REDACTED] (Department Exhibit # 6-9) concluded that Claimant's ability to perform work related activities would be moderately impaired. It was also the Doctor's impression that Claimant was magnifying symptoms and under-representing his abilities. The Doctor felt that Claimant's motivation to work and take directions from others or tolerate customers was low, but that Claimant seems capable of doing so.

There is also a mental status examination dated [REDACTED] from [REDACTED] (Department Exhibit # 3-5). The diagnosis was bipolar disorder, antisocial personality disorder and a history of alcohol abuse and drug dependency. The Doctor recommended that Claimant be involved in outpatient treatment to reduce psychiatric symptoms, stabilize daily functioning, address substance abuse issues, and monitor assaultive potential.

Claimant's mental impairments were compared with the Social Security Administration impairment listings 12.04 Affective Disorders. Those listing are:

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, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome
2. Manic syndrome

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 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;

OR

C. Medically documented history of a 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 a 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.

Claimant's impairment did not meet or equal these listings. Claimant meets the requirements of section A. Claimant does not meet the requirements of section B because the current medical source evidence in the record indicates he is only moderately in any area. Claimant does not meet the requirements of section C.

STEP 2

In this step, we determine whether there has been medical improvement in your previous impairments. Medical improvement is defined in 20 CFR 416.994(b)(1)(i). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the evaluation proceeds to Step 3. If there has been no decrease in medical severity and thus no medical improvement, the evaluation skips Step 3 and proceeds to Step 4.

A summary of the medical evidence which was the basis of Claimant's approval for State Disability Assistance (SDA) follows. The discharge summary from [REDACTED] (Department Exhibit # 58) is for Claimant's stay from [REDACTED]. The summary states Claimant: was admitted to the inpatient psychiatric unit expressing suicidal ideations; was stabilized with antipsychotic and antidepressant medication; and improved rapidly. The axis I diagnosis was bipolar disorder, polysubstance dependency, and post traumatic stress disorder.

The psychiatric evaluation by New Passages dated April 3, 2008 (Department Exhibit # 47-51) gave a diagnosis of bipolar disorder, polysubstance abuse, and antisocial disorder. The evaluation showed current substance use with normal thought content. The treatment plan listed substance issues. [REDACTED] signed the evaluation and also a Mental Residual Functional Capacity Assessment (form DHS-49E). With regard to understanding and memory the Doctor

indicated that Claimant was not significantly limited in any areas. With regard to sustained concentration and persistence the Doctor indicated Claimant was moderately limited in his abilities to: maintain attention and concentration for extended periods; work in coordination or proximity to others without being distracted; and complete a normal workday without interruptions from psychologically based symptoms. With regard to social interaction the Doctor indicated Claimant was moderately limited in his abilities to: maintain socially appropriate behavior; and to interact appropriately with the general public. The Doctor indicated Claimant was markedly limited in his ability to accept instructions and respond appropriately to criticism from supervisors. With regard to adaption the Doctor indicated Claimant was moderately limited in his ability to respond appropriately to changes in the work setting.

Claimant's current medical evaluations follow.

The mental status examination dated [REDACTED] by [REDACTED] (Department Exhibit # 6-9) concluded that Claimant's ability to perform work related activities would be moderately impaired. It was also the Doctor's impression that Claimant was magnifying symptoms and under-representing his abilities. The Doctor felt that Claimant's motivation to work and take directions from others or tolerate customers was low, but that Claimant seems capable of doing so.

There is also a mental status examination dated [REDACTED] from [REDACTED] (Department Exhibit # 3-5). The diagnosis was bipolar disorder, antisocial personality disorder and a history of alcohol abuse and drug dependency. The Doctor recommended that Claimant be involved in outpatient treatment to reduce psychiatric symptoms, stabilize daily functioning, address substance abuse issues, and monitor assaultive potential.

Claimant's mental impairments when he was approved for benefits included one marked limitation and several moderate limitations in his ability to work. Claimant's current mental impairments are now only some moderate limitations in his ability to work. There has been medical improvement in Claimant's previous impairments. The evaluation proceeds to Step 3.

STEP 3

If there has been medical improvement as shown by a decrease in medical severity, this step of the evaluation is done to determine if the medical improvement is related to your ability to work. 20 CFR 416.994(b)(1) provides:

(ii) *Medical improvement not related to ability to do work.* Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but *no* increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section.

(iii) *Medical improvement that is related to ability to do work.* Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section.

(iv) *Functional capacity to do basic work activities.* Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s). In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do this by looking at how your functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment,

dealing with changes and dealing with both supervisors and fellow workers.

As noted in Step 2, there has been an increase in claimant's residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. Thus, claimant's medical improvement is related to claimant's ability to do work. In this case the evaluation skips Step 4 and goes directly to Step 5.

STEP 4

If Step 2 had determined that there was no medical improvement, or Step 3 had determined your medical improvement was not related to your ability to work, this step of the sequential evaluation would be done. In this case Step 4 is not necessary.

STEP 5

If Step 2 and Step 3 showed medical improvement related to your ability to do work or if Step 4 determined that one of the first group of exceptions applies, this Step will determine whether your current impairment or combination of impairment(s) are severe or not. An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. When we talk about basic work activities, we mean 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.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In this case, Claimant asserts continuing disability because he has anger issues and cannot get along with others. After examining Claimant on [REDACTED] concluded that Claimant was magnifying symptoms, under-representing his abilities, and while Claimant's motivation to work and take directions from others or tolerate customers was low, Claimant seems capable of doing so.

The report from [REDACTED] dated [REDACTED] strongly recommended Claimant continue outpatient treatment but did not note any mental abnormalities or conditions that would prevent Claimant from being able to work.

The current objective medical evidence shows that Claimant does not have a severe mental impairment that would limit his ability to perform basic work activities.

When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(20 CFR 416.994 (b)(5)(v)) No further analysis is required to decide this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that Claimant no longer meets the disability standard for State Disability Assistance (SDA).

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 16, 2010

Date Mailed: February 22, 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 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.

GFH 

cc: 