

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.: 2009-6810
Issue No.: 2009, 4031
Case No: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 19, 2009
Oakland County DHS (2)

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 hearing was conducted on February 19, 2009. The Claimant appeared and testified along with [REDACTED]. The Claimant was represented by [REDACTED] Trudy Storz appeared on behalf of the Department. At the Claimant's request, the record was extended in order to allow for the submission of additional medical records.

On March 25, 2009, the additional records were received, reviewed and forwarded to the State Hearing Review Team ("SHRT") for consideration. On April 17, 2009 the SHRT found the Claimant not disabled and capable of performing unskilled medium work. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and the 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. On March 31, 2008, the Claimant filed a public assistance application seeking MA-P, Retro MA-P, and SDA benefits.
2. On July 1, 2008, the Medical Review Team (“MRT”) denied the Claimant’s application finding the Claimant’s impairment(s) did not prevent employment for 90-days or more for SDA purposes, and finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp. 1, 2)
3. On July 14, 2008, the Department sent an eligibility notice to the Claimant informing her that she was found not disabled.
4. On October 10, 2008, the Department received the Claimant’s written request for hearing protesting the determination that she was not disabled. (Exhibit 2)
5. On January 1, 2009 and April 17, 2009, the SHRT found the Claimant not disabled. (Exhibit 3)
6. The Claimant’s alleged physical disabling impairments are due to low back pain, diabetes, retin neuropathy, obesity and cellulitis.
7. The Claimant’s alleged mental impairments are due to bipolar and personality disorders.
8. The Claimant’s impairment(s) will last or have lasted for 12 months or more.
9. At the time of hearing, the Claimant was 40 years old with a [REDACTED] birth date; was 5’ 4” and weighed 285 pounds.
10. The Claimant completed 12th grade and has an employment history as a security guard and general laborer.

CONCLUSIONS OF LAW

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”), formally 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”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

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 416.929(a)

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 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. 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 outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in approximately 2007. The Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. 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 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)

In this case, the Claimant asserts disability based upon diabetes mellitus, retin neuropathy, chronic pain with arthritis, and bipolar and borderline personality disorders.

In support of the Claimant's assertions, treatment records from [REDACTED] and [REDACTED] were submitted. These records document treatment for left knee pain with a limited range of motion; chest pain with shortness of breath; right breast cellulitis; and diabetes mellitus.

On [REDACTED], the Claimant was treated for a breast infection. Warm compresses and medication were provided.

On [REDACTED], the Claimant presented to [REDACTED] with complaints of right breast redness and swelling despite outpatient treatment with Avelox. The physical examination documented a lateral 10 cm swelling and erythema. The area was incised and drained. Ultimately, the Claimant was diagnosed with acute right breast cellulitis, uncontrolled diabetes mellitus. The Claimant was discharged on [REDACTED]

On [REDACTED], the Claimant attended a follow-up appointment for her breast. The Claimant's blood sugars continued to be elevated and the Claimant complained of a headache. The Claimant's compliance with medication was noted and she was instructed to adhere to her diet and exercise and to monitor her blood sugars.

On [REDACTED], the Claimant attended a follow-up appointment for her right breast cellulitis. Decreased pain and redness was noted as well as slight drainage.

On [REDACTED], the Claimant participated in her annual psychiatric evaluation at [REDACTED]. The report documents that the Claimant was first diagnosed with bipolar disorder and borderline personality disorder in [REDACTED] when she was hospitalized for 10 days. In [REDACTED], the Claimant was hospitalized again for approximately 1 week after episodes of “rageful behavior.” The Claimant’s bipolar was characterized by both depression and rage with no clear cut manic or hypo manic episodes. The Claimant also meets almost all the criteria for borderline personality disorder to include a mild degree of self-cutting. The Claimant was diagnosed with Bipolar I disorder and borderline personality disorder. The Claimant’s Global Assessment Functioning (“GAF”) was 51. The Claimant’s Zoloft and Resperdal were increased and the Claimant was instructed to continue with her other medication regime.

On [REDACTED], the Claimant’s insulin dosage was increased after a fasting blood sugar test.

On [REDACTED], the Claimant was treated for a right leg abscess and diabetes. The Claimant declined incision and drainage and her insulin was resumed. Follow-up blood work was recommended.

On [REDACTED], a Medical Needs form was completed by her physician. The Claimant’s treatment for insulin dependent diabetes mellitus, cholesterol, bipolar disorder, and tobacco use would last her lifetime however; the physician opined that the Claimant was able to work at her usual occupation or other work. In addition, the Medical Examination Report completed by this physician found the Claimant in stable condition with no physical and/or mental impairments.

On [REDACTED] [REDACTED] [REDACTED] the Claimant's treating psychiatrist completed a Psychiatric/Psychological Examination Report and a Mental Residual Functional Capacity Assessment on behalf of the Claimant. The Claimant's [REDACTED] assessment (see above) was referenced. The Claimant was found markedly limited in her ability to understand, remember, and carry out detailed instructions; maintain attention and concentration for extended periods; performs activities within a schedule, maintain regular attendance and punctuality; work in coordination with or proximity to others; complete a normal workday; interact appropriately with the general public; and accept instructions and respond appropriately to criticism from supervisors. Additionally, the Claimant was found markedly limited in her ability to get along with co-workers or peers without exhibiting behavioral extremes; maintain socially appropriate behavior to include adherence to basic standards of neatness and cleanliness. The Claimant's ability to set realistic goals or make plans independently of others was also markedly limited. In all, the Claimant was found markedly limited in 11 of 20 mental activities.

On [REDACTED], the Claimant's treating psychiatrist examined the Claimant. The Claimant's diagnoses of bipolar and borderline personality disorders were listed. The Claimant's GAF was 34. The Mental Residual Functional Capacity Assessment found the Claimant markedly limited in 13 of the 20 mental activities. The additional two areas from the prior Assessment included the inability to respond appropriately to change in a work setting and to travel in unfamiliar places or use public transportation. Despite the increase in medications, the Claimant still experienced difficulty sleeping, irritability, sadness, and racing thoughts. The [REDACTED] Mental Status Examination was administered which resulted in a finding of mildly cognitively impaired range with memory issues highlighted.

In this case, the Claimant has presented medical evidence establishing that she does have some physical limitations affecting his ability to perform basic work activities such as standing, walking, sitting, lifting, carrying, pushing and pulling. In addition, the Claimant has submitted medical evidence that she does have some psychological limitations on her ability to perform basic work activities such as understanding, carrying out, and remembering intructions; use of judgment; responding appropriately to supervision and co-workers; and dealing with changes in a routine work setting. Ultimately, 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 disabling impairments due to chronic pain, diabetes mellitus, cellulitis, and obesity. The Claimant's mental disabling impairments are due bipolar and borderline personality disorders. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

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

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 are 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 distractibility; 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.

Listing 12.08 provides that a personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-

term functioning and are not limited to discrete episodes of illness. The required level of severity is met when the requirements in both A and B are satisfied.

- A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:
 - 1. Seclusiveness or autistic thinking; or
 - 2. Pathologically inappropriate suspiciousness or hostility; or
 - 3. Oddities of thought, perception, speech and behavior; or
 - 4. Persistent disturbances of mood or affect; or
 - 5. Pathological dependence, passivity, or aggressivity; or
 - 6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

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 this case, medical evidence shows that the Claimant has bipolar disorder and borderline personality disorder. The Claimant's psychiatric treatment has continued for more than 12 months and although the Claimant adheres to prescribed treatment, the DHS 49-E documents several areas where the Claimant's ability for sustained concentration, social interaction, and adaption to work setting, etc. remains markedly limited. The Claimant's has a GAF of 34. The record further documents, in part, episodes of loss of interest in activities, sleep disturbance, social isolation, and concentration difficulties. Based upon the submitted medical documentation, the Claimant's mental impairment(s) have lasted continuously for more than a 12 month period and meet or equal the Listing impairments found within 12.00, namely 12.04.

Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

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 PAM, PEM, and PRM. 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 this case, because the Claimant was found disabled for the purposes of the MA-P program, thus the Claimant is disabled for purposes of the SDA 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 MA-P and SDA determination is REVERSED.
2. The Department shall initiate review of the March 31, 2008 MA-P 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 supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility under both the MA-P and SDA programs in accordance department policy in May 2010.

/s/

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

Date Signed: 04/22/09

Date Mailed: 04/23/09

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

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