

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: 2009-748
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2009
Ottawa 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, a telephone hearing was held on February 11, 2009. Claimant personally appeared and testified.

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 functionally illiterate 43-year-old male with a Special Education history, whose only relevant employment has been in sporadic, unskilled factory jobs which have all ended unsuccessfully because he is unable to consistently understand and/or carry-out the supervisory instructions necessary to meet adequate job performance standards.

(2) On [REDACTED], claimant underwent an [REDACTED] [REDACTED] in order to determine whether he has a cognitive disorder or a medical/psychiatric condition severe enough to qualify for a disability allowance (Department Exhibit #1, pgs 4-7).

(3) Claimant appeared to give his best effort throughout this evaluation, per the treating doctor [REDACTED] Department Exhibit #1, pg 5).

(4) Claimant's [REDACTED] I results confirmed significant functional limitations in such simplistic areas as using a scale, consistently telling time correctly, making change, reading menus and knowing when his favorite television shows will be broadcast (Department Exhibit #1, pg 4).

(5) On formal [REDACTED], claimant's Verbal IQ was [REDACTED], his Performance IQ was [REDACTED] and his Full Scale IQ was [REDACTED] (Department Exhibit #1, pg 5).

(6) Claimant appeared dysphoric with a restricted range of affect during testing (Department Exhibit #1, pg 5).

(7) Likewise, claimant's demeanor at hearing on [REDACTED] was consistent with the evaluating doctor's observation.

(8) With regard to mood, as assessed per [REDACTED], the doctor summarized:

With regard to his mood, [claimant] endorsed a number of items on the [REDACTED] I, a brief self-report measure of depression. These included feelings of sadness, pessimism, prominent self-critical thinking and anhedonia, guilt, passive suicidal thoughts, tearfulness, agitation, decreased interests, anergia, irritability, decreased appetite, fatigue, and decreased libido. He obtained a score suggestive of severe depression. Conceptionally, it's likely his depressive symptoms are the result of his struggling to be successful in the face of limited cognitive resources. Also, he noted during the interview that his father always belittled him when he was growing up.

In summary, the current results reveal cognitive functions in nearly all domains assessed that fall in the impaired or extremely low ranges. When these scores are taken together with his history and limited vocational success, along with his adaptive functioning skills that fall significantly below that of his same age peers, [claimant] meets the criteria for a diagnosis of mild mental retardation. In addition to that, he is struggling with a significant depressive disorder.

GAF= [REDACTED] currently, highest past year= [REDACTED]

RECOMMENDATIONS: [Claimant's] cognitive limitations make him unable to function in a competitive workplace environment. He has the ability to be successful only when performing highly structured and repetitive tasks, the sort that would require a sheltered employment setting (Department Exhibit #1, pgs 6 and 7).

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 impaired cognitive function and inability to maintain prolonged employment because of it is extensively documented in the records, as well as in the credible hearing testimony. The record confirms claimant deals daily with impaired comprehension, concentration, attention and memory. He cannot understand instructions, is frequently short-tempered and isolative with low self-esteem, self-critical thinking, and significant depression. Furthermore, the independent test results conclusively establish claimant has deeply ingrained, marked limitations in functional, cognitive and emotional areas of behavior that would prevent any success for a favorable return to the competitive workforce. In fact, claimant's documented constellation of symptoms meets Listing [REDACTED]). The department's finding to the contrary simply flies in the face of all the credible evidence presented, and thus, it cannot be upheld.

DECISION AND ORDER

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

Accordingly, the department's denial of claimant's July 31, 2008 MA/SDA application is REVERSED and it is ORDERED that:

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

(2) The department shall review claimant's mental/emotional condition for improvement in [REDACTED], unless claimant is approved eligible for Social Security disability benefits by that time.

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

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

Date Signed: _____

Date Mailed: _____

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]