

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 20097513
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: April 2, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 held on April 2, 2009.

ISSUE

Whether claimant has established that claimant is no longer disabled for Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

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

1. During July 2008, claimant was receiving MA and SDA based on disability. Her assistance was due for medical review.
2. November 7, 2008, the Medical Review Team (MRT) denied claimant's medical review.
3. November 12, 2008, the department sent claimant written notice that her medical review was denied.
4. November 17, 2008, the department received claimant's timely request for hearing.

5. January 9, 2009, the State Hearing Review Team (SHRT) denied claimant's medical review.
6. April 2, 2009, the telephone hearing was held.
7. Claimant asserts disability based on impairments caused by mental illness.
8. Claimant testified at hearing. Claimant is 55 years old, 5'5" tall, and weighs 250 pounds. Claimant completed high school and has a Bachelor of Science Degree. Claimant does not have a driver's license. Claimant cares for her needs at home.
9. Claimant's past relevant employment has been in general unskilled labor and as a program director of a nonprofit organization.
10. At last positive decision in July 2007, claimant was diagnosed with schizoaffective disorder, bipolar type. Claimant was hypomanic and paranoid. Exam revealed hypomanic, pressured, suspicious, and paranoid behavior; pressured speech, difficult to interrupt; mood is irritable; thoughts were tangential, flight of ideas, and paranoid. Thought content included delusional beliefs. Attention and concentration was poor. Memory was fair. Insight and judgment were impaired. Department Exhibit A, pgs 46-48.
11. At review, on September 22, 2008, claimant's psychologist completed a narrative psychiatric evaluation. Psychiatrist indicates AXIS I diagnoses of bipolar disorder type 2, panic disorder without agoraphobia, PTSD, marijuana abuse. He indicates that claimant's hygiene was fairly good. Gait, speech, and level of psychomotor movement were within normal limits. Affect was of moderate depth and range. Mood is somewhat anxious. Patient's thought content was coherent and there were no loose associations. She denied auditory hallucinations or experiences of derealization. She reports having racing thoughts and mood swings. Memory, concentration, general fund of knowledge, and ability to abstract are grossly intact. Judgment was fair. Sphere and insight was somewhat limited. Department Exhibit A, pgs 102-104.
12. When comparing the objective medical evidence at review the objective medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical condition has occurred or that claimant was not disabled. At last positive decision, claimant was paranoid and delusional. Behavior and activity were hypomanic, pressured, suspicious, and paranoid. Her mood was irritable. Speech was pressured and difficult to interrupt.

At review, claimant's affect was of moderate depth and moderate range. Gait, speech, and level of psychomotor movement were within normal limits. Thoughts were coherent and there were no loose associations. Claimant reported occasional mood swings. Memory, concentration, general fund of knowledge, and ability to abstract were grossly intact. Judgment was fair and insight was somewhat limited.

13. Claimant's medical improvement is related to the ability to work.
14. Claimant is capable of performing unskilled work activities.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 Manual (PRM).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s).... 20 CFR 416.994(b)(1)(i).

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. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

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. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section,

substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

At Step 1, claimant's impairments do not meet or equal any Social Security Listing. Finding of Fact 11-12.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has medically improved at review. At last positive decision, claimant's symptoms of mental illness were more severe than at medical review. At medical review, cognitive functions are generally within normal limits. Finding of Fact 10-12.

At Step 3, claimant's medical improvement is related to her ability to perform work. Improved cognitive function enables claimant to perform work activities. Finding of Fact 10-14.

At Step 4, claimant's medical improvement is related to the ability to perform work. See Step 3 above.

At Step 5, claimant does not have current severe impairments. See discussion at Step 2 and 3 above. Finding of Fact 10-12.

At Step 6, claimant's past relevant employment has been performing general labor as program director of a nonprofit organization. Finding of Fact 9. The record is sufficient to establish that claimant is capable of performing the tasks required by her past relevant employment at unskilled labor. Finding of Fact 10-14. See discussion above.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 7, the medical evidence of record establishes that claimant has a non-exertional mental illness. The record does not indicate claimant has severe physical limitations. Finding of Fact 10-14.

After careful examination of the record and for the reasons discussed at Steps 1-7 above, the Administrative Law Judge decides that claimant does not meet the federal statutory requirements for disability at medical review. Therefore, claimant does not meet the disability requirements for MA based on disability at review. For reasons discussed at Steps 1-7 above, claimant does not have severe impairments that prevent all work for 90 days or more at review. Therefore, claimant does not meet the disability requirements for SDA based on disability at review.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established that claimant is no longer disabled for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 25, 2010

Date Mailed: October 27, 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.

JAB/ db

cc:

