

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.: 2009-9609  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
April 20, 2009  
Wayne County DHS (35)

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 telephone hearing was conducted from Detroit, Michigan on April 20, 2009. The Claimant appeared and testified, along with [REDACTED]. Rhonda Robinson appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and 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. The Claimant submitted a public assistance application seeking MA-P and SDA benefits on July 3, 2008.
2. On October 16, 2008, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant's impairment(s) does 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. 4, 5)
3. On November 3, 2008, the Department sent an eligibility notice to the Claimant informing her that her MA-P and SDA benefits were denied. (Exhibit 1, p. 2)
  4. On December 1, 2008, the Department received the Claimant's Request for Hearing protesting the denial of benefits. (Exhibit 1, p. 1)
  5. On February 2, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
  6. The Claimant's alleged physical disabling impairments are due to back pain.
  7. The Claimant asserts mental disabling impairments due to schizoaffective and bipolar disorders.
  8. At the time of hearing, the Claimant was 32 years old with a [REDACTED] birth date; was 5' 2" and weighed approximately 200 pounds.
  9. The Claimant completed through the 11<sup>th</sup> grade and is currently enrolled, on a part-time basis, in classes to complete her GED.
  10. The Claimant's prior employment consists of working as a machine operator and in a fast food restaurant.

#### 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 applicant 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 general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work;

and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)  
(3) (5) (6)

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 January 2002. The Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. 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 the present case, the Claimant alleges physical disability on the basis of chronic back pain. The Claimant's Psycho-Social Assessment notes the Claimant's back pain however no treatment records or diagnosis was submitted. Moreover, the Claimant testified that she has not treated for chronic back pain and takes over-the-counter medication approximately once a week when she experiences pain. The Psychiatric Evaluation listed the Claimant's neck and back pain as improving. As previously stated, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment. In this case, the record was devoid of objective medical evidence to meet the severity requirement thus the Claimant is not physically disabled at Step 2.

The Claimant also asserts mental disabling impairments due to schizoaffective and bipolar disorders.

The Claimant was involuntarily admitted to [REDACTED] on [REDACTED] and discharged on the [REDACTED]. The Claimant was referred to [REDACTED] for aftercare. The mental status evaluation noted the Claimant's mood as depressed with hallucinations, paranoid ideations, and delusions. The Claimant's insight and judgment were fair although the

Claimant was withdrawn and suspicious during the interview. The initial psycho-social assessment diagnosed the Claimant with Bipolar I disorder, mixed type with alcohol abuse. The Claimant's Global Assessment Functioning ("GAF") was 45. Additionally, the Claimant was found to have insight, was literate, able to maintain her own funds, proficient in English, able to maintain own appointments and monitor medication, and was able to transport and advocate for herself. The Claimant did not need assistance with activities of daily living.

On [REDACTED], the Claimant was evaluated by her Psychiatrist at [REDACTED]. The Claimant was treated for schizoaffective disorder. As a result, the Claimant's prescriptions were increased based upon continued symptoms.

On [REDACTED], the Claimant was again seen by her Psychiatrist. The Psychiatric Evaluation documents that the Claimant was previously noncompliant with her medication for approximately 4 years but that since her discharge from [REDACTED], she was sleeping better and less anxious although she was still depressed. The mental status examination listed the Claimant's mood as anxious and fearful with hallucinations, paranoid ideation, and delusions. The Claimant's insight and judgment were poor. Ultimately, the Claimant was diagnosed with Schizoaffective Disorder with alcohol abuse and Cannabis dependence – episodic use. The Claimant's GAF remained at 45. The Claimant takes 80 mg of Geodon and 20 mg of Lexapro. Additionally, the Claimant was referred to an inpatient substance abuse program.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that she does have some mental limitations on her ability to perform basic work activities. 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 mental disabling impairments due to schizoaffective and bipolar disorders.

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

Chronic mental disorders may be controlled or attenuated by psychosocial factors that provide highly structured and supportive settings which may greatly reduce the mental demands placed on an individual. 12.00G If an individual's symptomatology is controlled, the ability to function outside of the structured setting is considered. *Id.* In addition, the effects of medication are considered as it relates to an individual's ability to function. Functional limitations that persist despite medication are also considered when determining the severity of the impairment.

12.00G

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning. 12.03 The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
  - 1. Delusions or hallucinations; or
  - 2. Catatonic or other grossly disorganized behavior; or;
  - 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
    - a. Blunt Affect; or
    - b. Flat Affect; or
    - c. Inappropriate affect;

Or

- 4. Emotional withdrawal and/or isolation;

AND

- B. Resulting in a least two of the following:
  - 1. Marked restriction of activities of dialing living; or
  - 2. Marked difficulties in maintaining social functioning; or
  - 3. Marked difficulties in maintaining concentration, persistence, or pace; or

OR  
4. Repeated episodes of decompensation, each of extended durations

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic 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 changed 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 12.04 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.

In this case, medical evidence documents that the Claimant has schizoaffective disorder which encompasses two different conditions; schizophrenia and depression. The Claimant was

also diagnosed with Bipolar disorder. The Claimant's recent psychiatric treatment began in [REDACTED]. The record shows that the Claimant's mental impairments are well controlled under the Claimant's current medication regime. is going well and that she has to see her psychiatrist once every 8 weeks for a medication recheck. There were no further episodes of decompensation and the Claimant is able to attend school two days a week from 9:00am until 1:00. The records also document issues with alcohol and/or substance abuse treatment. In consideration of the Claimant's diagnoses, it is found that the substance/alcohol use is not a contributing factot material to the determination of disability and the Claimant's functional limitations would remain independent of the abuse. 20 CFR 416.935 According to the medical evidence alone, the Claimant's mental impairments do not meet or equal the intent or severity of the listing requirements within 12.00 thus she cannot be found disabled, or not disabled, for purposes of the Medical Assistance program. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a) (4) (iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b) (1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a (a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work is made. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c) (2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Over the past 15 years, the Claimant worked in fast food restaurants and as a machine operator. There was no evidence presented to establish that the Claimant's impairment, in light of prescribed treatment, interferes with her ability to function independently, appropriately, effectively, and on a sustained basis. Medical documentation shows that the Claimant is able to

perform her activities of daily living and that she currently attends school on a part-time basis in an attempt to obtain her GED. The medical record documents that the Claimant's mental impairments however there was no evidence that the Claimant's nonexertional limitations would prevent her from performing past relevant work. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is able to return to past relevant work. Accordingly, the Claimant is found not disabled at Step 4 therefore the fifth-step in the sequential evaluation process is not required.

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. PEM 261, p. 1 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. PEM 261, pp 1 – 2

In this case, there is insufficient evidence to support a finding that the Claimant's impairment has disabled her under the SSI disability standards. Accordingly, it is found that the Claimant is not disabled for purposes of the SDA program.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

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

Date Signed: 04/21/09

Date Mailed: 04/21/09

**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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