

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: 2010-1381
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 5, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 November 5, 2009. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was [REDACTED],

[REDACTED].

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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 as material fact:

(1) On June 13, 2008, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.

(2) On June 2, 2009, the Medical Review Team denied claimant's application stating that claimant was capable of past relevant work, namely unskilled medium work, per 20 CFR 416.920(E).

(3) On July 27, 2009, the department caseworker sent claimant notice that her application was denied.

(4) On August 6, 2009, claimant filed a request for a hearing to contest the department's negative action.

(5) On October 14, 2009, the State Hearing Review Team (SHRT) again denied claimant's application stating that she was capable of medium exertional, simple and repetitive tasks, and therefore retains the ability to remain gainfully employed. SHRT used Vocational Rule 203.28 as a guide.

(6) Claimant provided additional medical information following the hearing which was forwarded to SHRT for review. On February 3, 2010 SHRT once again determined that the claimant was not disabled as she was capable of performing medium unskilled work.

(7) Claimant is a 45 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 195 pounds after gaining 20 pounds due to medication use. Claimant completed 12th grade and can read, write and do basic math.

(8) Claimant states that she last worked in 2004 as a waitress for 4-5 months, but her drug and alcohol addiction affected her ability to work and job ended. Claimant also owned an escort service from 2001 to 2008 when she quit this profession.

(9) Claimant currently lives in a $\frac{3}{4}$ house, a substance abuse residential treatment center. Claimant has no driver's license as it was suspended due to traffic violations.

(10) Claimant alleges as disabling impairments Hepatitis C, degenerative joint disease of the left knee, bipolar disorder, polysubstance abuse, and pain in her heart.

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 Manual (RFT).

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 Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is

reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and testified that she has not worked since year 2004. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment or a combination of impairments that is "severe". 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. An impairment or

combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p).

The objective medical evidence on the record includes an [REDACTED] and [REDACTED], which states that the claimant has a long history of polysubstance addiction to include such drugs as crack cocaine, alcohol, vicodin and marijuana. Claimant had been to at least 10 residential programs and reported a history of bipolar disorder and suicidal behavior. Claimant was diagnosed with polysubstance addiction, bipolar disorder, NOS, and her GAF was 60.

A Medical Examination Report for an exam of August 7, 2008 indicates as claimant’s current diagnoses Hepatitis C, breast mass and osteoarthritis of the left knee. All of claimant’s examination areas are marked as normal except for the left knee pain. X-rays are cited as showing left knee moderate advanced degenerative joint disease. Claimant’s condition is stable and she can carry 50 lbs. or more frequently, can use both of her arms/hands for repetitive actions, but can operate foot/leg controls only with her right leg due to left knee issues. Claimant has no mental limitations.

In [REDACTED] claimant came to [REDACTED] because she was hearing voices in her head telling her to harm other people. Claimant was then seen at [REDACTED] for an assessment. Claimant’s affect was angry and anxious and her mood irritable and depressed. Her motor activity was hyperactive and agitated, she reported auditory hallucinations, and stated that she hears voices telling her to harm other people but can control them for now. Claimant also had persecutory beliefs stating that she knows people are out to get her and talk about her all the

time. Claimant reported not doing any drugs or alcohol since April, 2008. It was noted that the claimant is capable of handling her activities of daily living, that she has good emotional support system through family and friends in the program with her, and that she is not impulsive but thinks about her actions. Claimant's diagnoses was that of mood disorder NOS, polysubstance dependence and behavioral/personality problems. Claimant was admitted to stabilization. She was to apply for SSI and MA, and would like to receive information about housing options once her court order for [REDACTED] ends in October.

In [REDACTED] claimant spent eight days in [REDACTED] due to suicidal and homicidal ideas towards anybody and everybody. Claimant was put on Lithium and Neurontin, and was sleeping during the day time and then was up at night. Claimant eventually denied any suicidal or homicidal ideas, and demanded to go home. Involuntary hospitalization was not possible due to claimant denial of suicidal or homicidal ideas, compliance with medications, and no signs of psychosis or physical violence at all. Claimant was discharged with a diagnoses of bipolar disorder with psychosis, history of alcohol and crack cocaine dependency, and a GAF score of about 30.

Also in [REDACTED] claimant was seen for screening by [REDACTED] while a resident of [REDACTED], and stated her medications given to her during the hospital stay are not working properly for her. Claimant was oriented in all three spheres, she was angry and agitated that she does not meet criteria for hospital services.

[REDACTED] psychological evaluation indicates that the claimant arrived early for her appointment and was transported by [REDACTED] staff. Claimant's demonstrated affect was variable at times being depressed with some irritability and underlying agitation, but at other times she was able to smile and laugh. Claimant had a history of alcohol and drug abuse with

last use being in April, 2008, and several arrests, last one being in January, 2008 for open intoxicants as a passenger in a vehicle. Claimant's current diagnosis was that of bipolar disorder (by history) with reported auditory and visual hallucinations, history of chronic alcoholism and drug dependency, asthma, Hepatitis C, arthritis, hernia, history of spleen removal, history of closed head injury from a car accident when she was in 9th grade, and memory deficits. It was recommended that the claimant continue to be involved in psychiatric and substance abuse treatment designed to reduce psychiatric symptoms, stabilize daily functioning, and address substance abuse issues. Ongoing use of psychotropic medication will be an essential component of this treatment.

Medical examination report of April 13, 2009 lists as claimant's chief complaints left breast mass, arthritis and Hepatitis C. Claimant was also suffering from problems with her left knee that was injured in the car accident in 1979, and in which she has significant osteoarthritis with pain present all the time. Pain is exacerbated by walking, going up and down stairs, and standing for a prolonged period of time. Claimant also had a mass removed from her left breast about 4 months prior, and it turned out to be benign. Claimant had been given shots for Hepatitis C, diagnosed in 1979, and at this time doctor was just observing her blood levels.

Upon examination, claimant had an abnormal gait and walked with a slight limp favoring her left knee. The knee was swollen, tender, and increased in warmth and she had crepitus in that knee, with limited flexion and extension. Impression was that of severe degenerative joint disease involving the left knee. Examiner also noted that the claimant really needs psychotherapy for the rest of her life.

Additional information submitted following the hearing includes a psychological evaluation of April, 2008 with the results of MMPI test administered to the claimant upon her

admission to [REDACTED]. Testing results indicated the claimant has chronic marginal schizoid adjustment, her behavior is unpredictable and non-conforming, and she may find herself in legal difficulties because of poor judgment, impulsivity and illogical thinking. Claimant's prognosis is generally poor because of her unwillingness to focus on her own behavior, but it improves considerable with longevity. While psychotropic medications may be warranted because of the agitation and excitement, behavior modification based on the cognitive therapy model combined with client centered therapy is the preferential treatment. Diagnostic impression is that of alcohol dependence, cocaine dependence, schizophreniform disorder, borderline personality disorder, avoidant personality disorder, and a GAF of 50.

[REDACTED] indicates that the claimant is receiving treatment and her random urine screens are completed and have been negative as of October 30, 2009.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. Claimant has therefore met her evidentiary burden at Step 2, and analysis continues to Step 3.

At Step 3 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. This Administrative Law Judge finds that the claimant's medical record will support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. It is clear from claimant's medical record that she has undergone behavioral changes associated with the regular use of substances as specified in listing 12.09, Substance Addiction Disorders, and that her condition equals listing 12.04,

Depressive Syndrome. Claimant's condition has lasted for 12 months. Accordingly, claimant can be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). No further analysis is needed.

The claimant has presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant meets the disability criteria for State Disability Assistance benefits also.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA, retro MA and SDA application.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed June 13, 2008 MA, retro MA and SDA application and grant her any benefits she is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).

2. Review claimant's ongoing medical eligibility in July, 2011, at which time updated medical records are to be obtained.

3. At review, consider claimant's continued compliance with psychological treatment, medication compliance, and abstaining from alcohol and drug use. Claimant's failure to comply with psychological treatment, prescribed medication intake and continued use of alcohol and/or drugs may jeopardize her continued receipt of MA and SDA benefits, and she is advised of the same by this decision.

4. Notify the claimant in writing of department's MA and SDA eligibility determination.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 30, 2010

Date Mailed: June 30, 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.

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