

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-13936

Issue No: 2009/4031

Hearing Date:

February 3, 2010

Kent 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 3, 2010. Claimant, his girlfriend and his case manager from [REDACTED] personally appeared and testified. Additionally, claimant was represented by [REDACTED], Attorney.

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 an intelligent, articulate, 42-year-old nonsmoker/nondrinker with a high school diploma and three years of post-secondary education in photography.
2. Claimant has a valid driver's license and he maintains a stable relationship with a long-term, significant other he met on the Internet; this couple plays cribbage nearly every day and sometimes they eat and/or attend current movies, per the hearing testimony.
3. On September 16, 2009, claimant applied for disability-based MA/SDA.

4. When that application was denied, claimant filed a timely hearing request dated October 23, 2009.
5. Claimant's hearing was held on February 3, 2010.
6. Claimant had been residing in his parents' basement for approximately two years as of that date.
7. Claimant has a history of intermittent, outpatient [REDACTED] treatment with [REDACTED]; however, no past psychiatric hospitalizations were alleged and none were evidenced by the medical records submitted at hearing (Department Exhibit #1, pgs 1-603).
8. Claimant's [REDACTED] treatment records verify Bipolar and Anxiety Disorders (NOS) as his diagnosed mental impairments, retroactive to at least 2000 (Department Exhibit #1, pgs 94-121 and 132-133).
9. At hearing, claimant stated he had not been employed for 11 years (photo lab developing), but his September 5, 2000 treatment records state in relevant part:

Progress Note:

I met with [claimant] at [REDACTED] r. His grooming and hygiene were good. He reported that his mood feels "a little off" but that he attributes that to a few days each week when he gets out of his schedule and forgets to take his medications. Currently, he has two days in a row off from work, but next week he goes back to having Tuesday and Friday off, so he feels that this will help him stay on a more regular schedule. He said that he feels "generally stable" and was not too concerned about his mood because he knew it would regulate itself again when he was more consistent with his medication. He was excited to discuss some recent photography jobs that he's done on the side, and hopes to continue with that...

Progress to Goal:

[Claimant] continues to work and will make more effort to take his medications consistently (Department Exhibit #1, pg 108).

10. Likewise, claimant's February 15, 2008 [REDACTED] treatment records state in relevant part:

[Claimant] has been medication compliant for over a year and is psychiatrically stable at this time. However, he has had to quit his job and is experiencing some intense physical healthcare difficulties that has created a great deal of vulnerability to living in his environment and remaining independent in the community. Although engaged in substance abuse in the distant past he has had no relapse in several years and indicates he has "no desire" to return to that bad habit" (Department Exhibit #1, pg 438).

11. Additionally, a more recent, independent consultative psychological report (5/18/09) indicates claimant's last job (unskilled dog kennel worker) ended in the summer of 2008 after three or four months (Department Exhibit #1, pgs 590 and 591).
12. Claimant's treating mental health source (██████) also completed a mental status evaluation two months before that independent consultative psychological report was done.
13. This ██████ report (3/17/09) indicates claimant was not significantly or only moderately limited in each of the four areas of mental/social functioning required to be assessed in disability determination cases, despite his longstanding mental diagnoses (Department Exhibit #1, pgs 452-455).
14. Claimant's ██████ report assessed his Global Assessment Function (GAF) at 60, which was completely consistent with that independent evaluator's score (Department Exhibit #1, pgs 452 and 588).
15. As of claimant's February 3, 2010 hearing date, he acknowledged the only medication CMH was continuing to prescribe for symptom management was ██████.
16. Claimant stands approximately 5'11" tall and is medically obese at approximately 245 pounds (BMI=39.13)(Client Exhibit B, pg 12).
17. Claimant has been diagnosed with high blood pressure, not uncommon in overweight patients and under adequate control with standard prescription medications (Client Exhibit B, pgs 3-25).
18. Additionally, claimant has been diagnosed with diabetes; daily oral medication and nightly insulin injections have been prescribed, but claimant reports his blood sugar levels remain high.

19. At hearing, claimant endorsed chronic, excruciating, debilitating pain in a multitude of bodily areas; however, no objective medical test results or records were submitted to support the duration and intensity of claimant's subjective pain complaints.
20. While claimant's MA/SDA hearing was pending he agreed to undergo another independent psychological evaluation at the department's request.
21. This evaluation took place on April 14, 2010, and summarizes in relevant part:

Test Results Protocols and Findings:

There is pattern of over-response here on psychometric testing. [Claimant] states he has been well or had stable mood for the last 10 years, but yet at the current time he is endorsing psychopathology which is very rare for individuals even with severe psychopathology. His clinical scales are all elevated, suggesting severe distress in the form of depression and anxiety. He does endorse panic attacks on his interview. There is a suggestion of rather extreme somatic complaints. His fear greatly restricts his overt activity, which is likely associated with his report of his chief limitations, being pain or fear of pain. His behavior restricting fears are likely longstanding and associated with introversion and a sense of mood pressured social avoidance.

Recommendation and Observations:

1. This is most likely a somatoform disorder. [Claimant], in fact, describes that his psychiatric symptoms have not been disabling in many years. This is due to both successive treatment with Depakote and then Tegretol. In fact, his work limitations are stated to be in the area of pain. I cannot diagnose the medical or physical origin of his pain, but can only state that an over-response pattern here as well as the MMPI-2RF, is fertile ground for both somatization disorder and factitious disorder cannot be ruled-out.

2. This evaluation did not include neuropsychological or memory screening. That

could be done later if needed. His memory complaints as stated probably are not limiting from many forms of employment including production or procedurally, well established, over-learned job roles. A memory disorder starting at age 8 and lasting to the present, reported to be slowly getting worse, is most likely developmental in origin, but it has not been a barrier to his most recent employment.

3. This evaluation likely not only [evidences] some exaggerated symptomology, but also a "blending" of symptoms. His report moves back and forth between memory, cognitive, mood, and multiple sources of physical complaints that make it extremely hard to focalize. This is often observed in somatoform difficulties. At least some factitious elements on this evaluation cannot be ruled-out. From a psychiatric standpoint, employability within otherwise stated physical limitations would be indicated (Department Exhibit #1, pgs 631 and 632).

22. At hearing, claimant's significant other's personal opinion differed from claimant's personal opinion in that she believes claimant's diagnosed mental impairments and the symptoms she has observed would prevent him from engaging in even low paying, unskilled jobs on a sustained basis.
23. Claimant stated at hearing his physical ailments cause him to be disabled not his mental ones, and the doctor is prescribing Ultram for claimant's self-reported pain symptoms.

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).

Michigan administers the federal MA program. In assessing eligibility, Michigan defers to the federal guidelines. These guidelines are also applied in SDA cases. They state in relevant part:

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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

Additionally, Social Security Ruling 96-4p (SSR 96-4p) states in relevant part:

A “symptom” is not a “medically determinable physical or mental impairment” and no symptom by itself can establish the existence of such an impairment. In the absence of a showing that there is a “medically determinable physical or mental impairment,” an individual must be found not disabled at Step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual’s complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

In addition, 20 CFR 404.1529 and 416.929 provide that an individual’s symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual’s ability to do basic work activities...unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

...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 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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

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.

It must allow us to determine --

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

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

...For example, we consider jobs unskilled if the primary work duties are handling, feeding and off-bearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together

with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 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).

Claimant is not disqualified from receiving MA/SDA at Step 1, because he has not been gainfully employed in any capacity since at least 2008 (See Finding of Fact #11 above).

At Step 2, claimant's diagnosed mental impairments (Bipolar and Anxiety Disorders), in combination, have left him with some non-exertional symptoms. However, it must be noted no severe physical impairments have been shown, and claimant's mental

impairments appear fully capable of adequate symptom management with current prescription medication as long as claimant maintains medication compliance.

Furthermore, it must be noted the law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. This Administrative Law Judge finds claimant's current prescription medications are sufficient to adequately manage his reported symptoms. Nevertheless, claimant's medically managed impairments meet the *de minimus* level of severity and duration required for further analysis.

At Step 3, the medical evidence on this record does not support a finding that claimant's diagnosed impairments, standing alone or combined, are severe enough to meet or equal any specifically listed impairments; consequently, the analysis must continue.

At Step 4, the record reveals claimant's mental impairments may prevent him from maintaining sustained, skilled employment despite his extensive post-secondary education. This is because skilled employment is likely to require intensive concentration and focus. Nevertheless, light, unskilled jobs like claimant's most recent position {dog kennel work} would certainly be within his capabilities, given the medical and psychiatric evidence presented. Therefore, claimant's disputed application could remain denied at Step 4, based on his ability to return to former, unskilled work. However, even if an analysis of Step 5 was required, claimant would be unsuccessful in establishing a legally disabling condition. This is because at Step 5, an applicant's age, education and previous work experience (vocational factors) must be assessed in light of the documented impairments. Claimant is a younger individual with extensive post-secondary education and past, semi-skilled/unskilled work experience. Consequently, at Step 5, this Administrative Law Judge finds, from the medical evidence of record, that claimant retains the residual functional capacity to perform at least unskilled light work as that term is defined above.

Claimant's biggest barrier to employability appears to be his lack of recent connection to the competitive work force. Claimant should be referred to [REDACTED]) for assistance with job training and/or placement consistent with his skills, interests and abilities. Claimant is not disabled under the MA/SDA definitions because he can return to his former work or engage in any number of light unskilled positions currently existing in the national economy, as directed by Medical-Vocational Rule 202.20.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant is not disabled by MA/SDA eligibility standards..

Accordingly, the department's action is AFFIRMED.

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

Date Signed: September 14, 2010

Date Mailed: September 14, 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 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.

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