

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.: 2010-15655
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 29, 2010
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 Monday, March 29, 2010. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit 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 January 5, 2009.

2. On July 30, 2009, the Medical Review Team (“MRT”) deferred the disability determination requesting a consultative psychological evaluation. (Exhibit 1, p. 1)
3. On August 18, 2009, the Claimant attended the psychological evaluation. (Exhibit 1, pp. 15 – 19)
4. On September 16, 2009, the MRT found the Claimant not disabled. (Exhibit 1, p. 1)
5. On September 19, 2009, the Department sent the Claimant an eligibility notice informing the Claimant that her MA-P and SDA benefits were denied. (Exhibit 1, p. 2)
6. On November 3, 2009, the Department received the Claimant’s Hearing Request. (Exhibit 2)
7. On January 28, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 4)
8. The Claimant’s alleged disabling impairments are due to non-epileptic seizure disorder, tremors, facial and vocal tics, post-traumatic stress disorder, and bipolar disorder.
9. The Claimant’s impairment(s) will last or have lasted for 12 months or more.
10. At the time of hearing, the Claimant was 30 years old with a [REDACTED] birth date; was 5’ 7” and weighed 143 pounds.
11. The Claimant is a college graduate with a work history as a disease intervention specialist, direct care worker, and telephone soliciter.

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”), formerly 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 416.927

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 applicants 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 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 is made. 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 discussed above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and last worked in 2004 thus the Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. 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)

The Claimant asserts disabling impairments due to non-epileptic seizure disorder, tremors, facial and vocal tics, post-traumatic stress disorder, and bipolar disorder.

On [REDACTED], the Claimant presented to the hospital with complaints of shaking and tremors. The Claimant's three psychiatric hospitalizations ([REDACTED], [REDACTED], and [REDACTED]) were noted. A review of a July 2008 EEG documented 23 spells. The Claimant was found with a history of bipolar disorder with rapid cycling and more manic spells with significant insomnia and psychosis. The Claimant presented with non-epileptic spells suggestive of conversion disorder along with both facial and vocal tics. Intense counseling and behavioral therapy was recommended.

On [REDACTED], the Claimant attended a psychiatric evaluation which documented the Claimant's tremors and twitching of the face. The Claimant had psychiatric hospitalizations in [REDACTED] and [REDACTED]. Ultimately, the Claimant was diagnosed with conversion disorder with motor symptoms or deficits and psychotic disorder not otherwise specified. The Global Assessment Functioning ("GAF") was 50 with a guarded prognosis.

On [REDACTED], a Medical Examination Report was completed by the Claimant's neurologist. The Claimant was diagnosed with vocal tics, facial tics, tremors, and non-epileptic seizures which are "frequent and disabling" and bipolar disorder. A history of post-traumatic stress disorder was noted as well as sexual abuse. The Claimant was found able to occasionally lift/carry 6-10 pounds with frequent carrying/lifting of up to 5 pounds and stand and/or walk 1 hour during an 8 hour workday with sitting up to 8 hours. The Claimant was able to perform repetitive actions with both extremities. The Claimant had no mental limitations however the Neurologist noted that the Claimant has frequent disabling and distracting vocalizations and facial tics. As a result, the Neurologist opined that her appearance and behavior would be very distracting in any workplace.

On this same date, [REDACTED], a Medical Needs form was completed by the Claimant's neurologist. The current diagnoses were non-epileptic seizure disorder, tremors, facial and vocal tics, post-traumatic stress disorder due to sexual abuse. The Claimant required assistance with her shopping and housework. The Claimant was found unable to work and any job for at least one year. The Neurologist stated that the Claimant has facial and vocal tics that are disabling and would be "too weird" in a work environment.

On [REDACTED], a Psychiatric/Psychological Examination Report was completed by the Claimant's treating psychologist. In [REDACTED], the Claimant suffered a breakdown which subsequently led to daily vocal tics, body tremors, jaw pain, intermittent outbursts of cursing, and non-epileptic seizures. The vocal tics significantly interfere with communication abilities. The Claimant was diagnosed with bipolar disorder with psychosis and conversion disorder.

On [REDACTED], the Claimant attended a consultative psychological examination. The facial tremors and vocal tics were evident throughout the evaluation. The Claimant was diagnosed with conversion disorder with mood and cognitive disorders not otherwise specified. The Claimant's GAF was 40 and her prognosis was guarded. The Psychologist opined that the Claimant's ability to understand, retain, and follow simple instructions, and perform basic routine tasks is moderately impaired. The ability to appropriately interact with coworkers, supervisors, and the public was mildly impaired.

On [REDACTED], a Psychiatric/Psychological Examination Report was completed on behalf of the Claimant. Within minutes of the evaluation, the Claimant exhibited symptoms (intense vocal tics and a non-epileptic seizure). The frequency and severity of the symptoms markedly restrict the Claimant's ability to function independently. The Psychiatrist opined that the Claimant was unable to manage household chores, cook, grocery shop, or maintain gainful

employment. The Claimant's memory and ability to concentrate are compromised by the symptoms. The Claimant was diagnosed with conversion disorder and bipolar disorder with psychosis. The GAF was 35.

On this same date, [REDACTED], a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was markedly limited in 11 of the 20 factors and moderately limited in 8 factors. The Claimant's life was found to be severely impacted by the symptoms which cause clinically significant distress and impairment in all areas of functioning.

In this case, the Claimant has presented medical evidence establishing that she does have physical and 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 disabling impairments due to non-epileptic seizures, body tremors, facial and vocal tics, post-traumatic stress disorder, and bipolar disorder. Appendix I, Listing of Impairments discusses the analysis and criteria necessary to support a finding of a listed impairment.

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

Listing 12.07 discusses somatoform disorders which manifest in physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms. To meet the required severity level, requirements of both A and B must be satisfied:

- A. Medically documented by evidence of one of the following:
 - 1. A history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or
 - 2. Persistent nonorganic disturbance of one of the following:
 - a. Vision, or
 - b. Speech; or
 - c. Hearing; or
 - d. Use of a limb; or
 - e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or
 - f. Sensation (e.g., diminished or heightened)
 - 3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury;

AND

B. Resulting in at least two of the following:

1. Marked restriction of 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.

In this case, medical evidence shows that the Claimant is diagnosed with non-epileptic seizure disorder, tremors, facial and vocal tics, post-traumatic stress disorder, conversion disorder, and bipolar disorder with psychosis. The Claimant's symptoms began before the age of 30 and have caused her to take medication frequently; see her psychologist and neurologist often; and cause the inability to work. Further, the persistent disturbances impact the Claimant's speech, use of limb, and movement/control. As a result, the Claimant is markedly limited in her activities of daily living as well as difficulties maintaining concentration, persistence, or pace. Ultimately, it is found that the Claimant's impairment(s) meet, or is the equivalent thereof, a listed impairment within Listing 12.00, specifically 12.07. Accordingly, the Claimant is found disabled at Step 3 with no further analysis 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. 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.

In this case, because the Claimant was found disabled for the purposes of the MA program, the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the January 5, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in accordance department policy in June 2011.

Colleen M. Mamelka

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

Date Signed: 5/4/2010

Date Mailed: 5/4/2010

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 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.

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