

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.: 2010-17388

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

March 22, 2010

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by in person hearing on March 22, 2010 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on November 30, 2009. Claimant was present and testified along with her sisters, [REDACTED] and [REDACTED]. Claimant was represented by [REDACTED]. [REDACTED] ES appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

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

1. Claimant filed for MA on June 12, 2009. Claimant requested MA retroactive to March, 2009.
2. Claimant is 5'1" tall and weighs 186 pounds.

3. Claimant is 38 years of age.
4. Claimant's impairments have been medically diagnosed as uncontrolled Diabetes Mellitus, Aspergers syndrome, suicidal thoughts, depression, ADD, anxiety disorder, hypertension, hypothyroidism, Irritable Bowel Syndrome, retinal detachment and hyperlipidemia.
5. Claimant's physical symptoms are lower back pain, blurred vision, shakiness from low blood sugar, fatigue, seizures, sleepiness during the day and sleep disturbances.
6. Claimant's mental symptoms are short term memory problems, poor concentration, anxiety attacks (irritated when things are said that she doesn't like, then takes medication, angry, heart pounds), confusion when sugar is low, weight gain – 15 lbs in last year, fatigue, suicidal thoughts (6 months ago), nervous when talks to people – gets nervous and voice gets high, hallucinations (a bug or something that's not really there – at least once a week, hears her own voice telling her she is not good enough), and difficulty understanding what people say to her due to Aspergers syndrome.
7. At the hearing, Claimant was slow to respond and did not understand the questions.
8. Claimant takes the following prescriptions:
 1. 70/30 Insulin – injection (4-5x/day)
 2. Regular Novalog, short acting
 3. Levothyroxin 175 mg daily
 4. Lisinopril – HBP
 5. Strattera – ADD
 6. Alprazolam – Anxiety (generic Xanax)
 7. Budeprion
 8. Simvastatin – Cholesterol
 9. Risperidone – prevented her from hearing voices
 10. Metoprolol
 11. Vicodin – for back pain (1x/day)
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a high school education, completed through special education classes. Claimant also attended trade school for cosmetology and food service but was never certified or employed using these skills.
11. Claimant is able to read, write and perform basic math. Claimant struggles but can do these things.

12. Claimant last worked at [REDACTED] in a warehouse, putting bar codes on shirts. Claimant's job duties required her to stand all day, lifting up to 50 lbs. as well as bending and stooping. Claimant requested an evaluation and her supervisor sent her home until she calmed down after Claimant persisted that it needed to be done right then. Claimant was fired on 9/15/2008 after working there for five years.
13. Claimant has prior employment experience at [REDACTED] (working for family), assembling door locks for patio doors (sitting, lifting boxes up to 20 lbs.) Claimant's family was bought out of the business, so Claimant lost this job. Claimant also worked at [REDACTED] as a cashier for 6 months but left due to an increase in pay.
14. Claimant testified to the following physical limitations:
 - i. Stand: not more than 8 hours
 - ii. bend/stoop: only when back hurts (lately every day)
 - iii. lift: Nothing over 5 lbs since eye surgery. Gallon of milk ok.
 - iv. grip/grasp: only when arthritis bothers her.
15. Claimant is working on performing household chores such as cleaning the bathroom, cooking, filling the dishwasher, and mowing the grass.
16. Claimant has lived with sister officially for the last two years. The sister testified that Claimant will make her bed and does her laundry on the week-ends. However, she also testified that it would be very generous to say that, in last year, Claimant cleaned the bathroom five times. Due to her Aspergers Syndrome, Claimant does not understand what she should do and how to help. Claimant also gets angry when her sister asks for help. Claimant does not understand that she cleaned the bathroom, but that it was done two months ago.
17. Both of Claimant's sisters testified that Claimant can be in a room for hours and lose track of time just being in a zone for hours. Claimant is not physically there - her eyes are open, but she just doesn't see things going on. For example, a few weeks ago, Claimant left something on stove and the smoke alarms started going off. Claimant never heard the alarms or responded.
18. Claimant's sister also testified that when Claimant was working, getting her to work on time was an issue. Claimant was consistently late 3/5 days per week. On her lunch break, Claimant would run to the store and think she would be fine on time, and then be late to return to work again. Claimant has difficulty awakening and getting moving in the morning. Claimant's sister wakes her every day. Furthermore, Claimant is dependent on the same routine. It does not do any good to try to get Claimant to move more quickly because she needs to do things at exactly the same time and in the same order.
19. Claimant's Sister testified that she consistently asks Claimant what her sugars are throughout day. Claimant would not be able to live on her own and manage it by herself.

20. Both sisters testified that Claimant is extremely anxious to go out in public. Claimant also hates to be alone at home for even a short period of time.
21. Claimant's sister also testified that Claimant's perception of what people say is completely different than the average person. For example, Claimant could return home from church angered by what the pastor has said, yet none of the rest of the family heard it the same way.
22. Claimant's sister testified that Claimant has had extreme back pain and sometimes Claimant is unable to bend down at all due to the extreme pain.
23. Claimant does not understand her medications. Claimant's sister testified that she will explain what the medications are for and Claimant still does not understand. Claimant will run out of her medication and not tell anyone.
24. Claimant's sister filed for guardianship in Oakland county last week. One sister goes to every doctor's appointment with Claimant as she is unable to understand what the doctor is saying and will get anxious.
25. The Department found that Claimant was not disabled and denied Claimant's application on September 1, 2009.
26. Medical records examined are as follows:

3/15/10 Petition for Guardianship and Dr. Letter in Support (Exhibit D)

[Claimant] has been a patient of mine since May of 2009. She is never alone in her visits to my office. She is always accompanied by her sister because the [Claimant] does not understand the instructions and medical advise that I give to her. It is my understanding that her sister is looking to take guardianship because [Claimant] is unable to care for herself on a medical and financial basis. This I believe to be true due to my experiences and time that I have spent with them. Pt is unable to deal with simple instructions and small task without reassurance and support by other family members. These simple tasks can be anything from waking up in the morning to cleaning the bathroom. She also does not have the ability to drive or live on her own.

2/18/10 Diabetes Management (Exhibit C)

Cl presented to ER with labile blood sugars. Type 1 diabetes since the age of 18 and has microvascular complications. The patient has required multiple eye surgeries secondary to retinopathy and retinal detachment. The patient also reports the beginnings of neuropathy in the lower extremities. The patient has difficulty managing her blood sugars secondary to her Asperger's syndrome, having difficulty with complicated regimens. Goal is to simplify the diabetes regimen so that is can be better controlled.

2/18/10 – 3/2/10 Hospital Admission (Exhibit B)

Hx of diabetes mellitus, hypothyroidism, hyperlipidemia, hypertension, and Asperger's syndrome who presents to the hospital with complains of elevated blood sugars. Long history of uncontrolled diabetes mellitus. The patient has problems understanding how and why she is taking her medications as well as following the doctor's instructions and diet. She has had several hospital admissions for hyperglycemia and DKA in the past.

1/4/10 Psychological evaluation (Exhibit 2)

CI presented as a sensitive and cooperative young lady who easily engaged in spontaneous conversation and maintained good eye contact. She had a difficulty time getting her point across at times and evidenced poor articulation. She is currently receiving special education services, certified as Learning Disabled.

TEST RESULTS: Overall reading and math skills are at a 6th grade level. Spelling is at a mid 5th grade level. CI continues to evidence a severe discrepancy between her written language skills and her intellectual potential. She appears to be experiencing difficulty dealing with her depression and has been feeling overwhelmed.

11/20/09 Medical Exam Report (Exhibit 1, pp. 1-2)

HX: Type One IDDM, Hypertension, Hypothyroid, Depression, hyperlipidemia, ADD

PHYSICAL LIMITATIONS: Pt can't drive

5/14/09 Mental Res. Functional Capacity Assess (Exhibit 1, pp. 7-8)

Markedly limited as follows:

1. The ability to remember locations and work like procedures.
2. The ability to understand and remember on or two step instructions.
3. The ability to understand and remember detailed instructions.
4. The ability to carry out detailed instructions.
5. The ability to maintain attention and concentration for extended periods.
6. The ability to perform activities within a schedule, maintain regular attendance and be punctual with customary tolerances.
7. The ability to work in coordination with or proximity to others without being distracted by them. (Consumer is increasingly paranoid regarding others around here and therefore is easily distracted.
8. The ability to answer simple questions or request assistance.
9. The ability to accept instructions and respond appropriately to criticism from supervision. (Consumer is fearful of asking due to her perception of feeling "stupid").
10. The ability to get along with coworkers or peers without distracting them or exhibiting behavior extremes.
11. The ability to maintain socially appropriate behavior.
12. The ability to respond appropriately to change in the work setting.
13. The ability to be aware of normal hazards and take appropriate precautions. (Pt is very trusting and is unable to differentiate between "helpful and harmful").
14. The ability to travel in unfamiliar places or use public transportation. (Pt does not have the ability to ask "appropriate" questions.
15. The ability to set realistic goals or make plans independently of others.

Pt is a kind, trusting individual however her insight is limited. Due to limited insight & judgment she is unable to make realistic goals & maintain scheduled activities without pressure: She is unable to appropriately interact within a social setting. Consumer's memory concentration and inability to be flexible interferes with her daily life. Cl does not have the ability to comprehend that "rules" are for everyone and not directed towards her. Cl is easily triggered due to her belief of "what's right".

1/22/9 Psychiatric Evaluation (Exhibit 1, pp. 11-12)

Pt has been coming for follow up treatment since 8/22/08. Prior to coming she was having crying spells, anxiety, low self-esteem, isolation and depression.

HX: She has a long history of mental illness since age 16. She states she was having depression. She was hospitalized twice for depression and suicide attempt. She has a history of suicide attempt by overdoses. She has seen private psychiatrist in the past and was treated with Antivan, Strattera, Wellbutrin XL and Zoloft. *

MENTAL HEALTH STATUS: Her mood was anxious and sad. Affect was blunted. She hears voices and she said "just negative repeatedly." She feels people are against her.

DX: Major depressive disorder, Aspergers disorder, Attention deficit, hyperactive disorder

3/24/09 – 3/26/09 Hospital Admission (Exhibit 1, p. 13)

HX: Type 1 diabetes mellitus, Aspergers syndrome, and hypothyroidism complaining of low back pain for last 2 weeks with left lower extremity numbness, tingling sensation and numbness.

1/19/09 Psychiatric IME examination (Exhibit 1, p. 62)

She has a long history of depression since childhood and she made suicidal gestures with psychiatric hospitalizations. She has a history of alcohol and cannabis abuses but claimed she stopped them at least 2 years ago.

DX: Major depression, recurrent, severe, Learning disorder

12/2/08 Psychiatric IME (Exhibit 1, p. 68)

Hospitalized in psychiatric facilities on 4 occasions ages 15 to 19.

MENTAL STATUS EXAM: Self esteem appeared to be very low. Psychomotor activity was somewhat reduced.

DIAGNOSTIC IMPRESSION: Major depressive disorder, chronic recurrent. History of attention deficit disorder, NOS, Adjustment disorder with depressed mood, borderline intellectual functioning,

PROGNOSIS: This claimant appears to be motivated to return to productive activity. With regulation of her pharmacotherapy, the prognosis may be favorable.

12/2/09 Internal Medicine Exam (Exhibit 1, p. 72)

3/18/08 Medical Exam Report (Exhibit 1, p. 75-76)

Long standing history of anxiety, depression, difficulty learning and concentration, severe constipation

PHYSICAL LIMITATIONS: Lifting 25 lbs. frequently, stand/walk less than 2 hrs in 8 hour day, sit less than 6 hrs in 8 hours day.

MENTAL LIMITATIONS: Limited in comprehension, sustained concentration, following simple directions and social interaction. Also short term memory difficulty.

10/8/08 Medical Exam Report (Exhibit 1, p. 132-133)

HX: Type 1 diabetes mellitus, since age 12, uncontrolled, with recent episode off hypoglycemic coma and seizures and by diabetic retinopathy.

PHYSICAL LIMITATIONS: Lifting less than 20 lbs occasionally, standing/walking less than 2 hours in 8 hr day. Pt should not be performing heavy lifting secondary to presence of diabetic retinopathy.

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 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made

at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, client has not worked since 9/15/08. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of uncontrolled Diabetes Mellitus, Aspergers Disorder, Anxiety, Hypertension, Hypothyroidism and Hyperlipidemia. The medical evidence has established that Claimant has a physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. Therefore, it is necessary to continue to evaluate the Claimant’s impairments under step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

Based on the hearing record, the undersigned finds that the Claimant's medical record supports a finding that the Claimant's mental impairments are "listed impairment(s)" or medically equivalent to a listed impairment. 20 CFR 416.920(a) (4) (iii). In this matter, the medical records establish a diagnosis of Aspergers Disorder, Major Depressive Disorder and ADHD.

After reviewing the criteria of listing §12.08 *Personality Disorders*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or is medically equivalent to the listing requirements. 20 CFR 404, Appendix 1 of Subpart P §12.08 describes the mental listing as follows:

Personality Disorders. A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

- A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:
 - 1. Seclusiveness or autistic thinking; or
 - 2. Pathologically inappropriate suspiciousness or hostility;
or
 - 3. oddities of thought, perception, speech and behavior; or
 - 4. Persistent disturbances of mood or affect; or
 - 5. Pathological dependence, passivity, or aggressivity; or
 - 6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

- B. Resulting in at least of 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 the present case, Claimant was medically diagnosed with Aspergers Syndrome, which is closely associated with high functioning autism. The symptoms of Aspergers, as described by Claimant's family, show Claimant to be inflexible, maladaptive and significantly impaired in her social and occupational activities. Claimant has some classic autistic behaviors such as tuning out the world to the extent that she does not hear fire alarms ringing. She is also fearful of being around anyone new without her dogs near and will misinterpret what people are saying believing that they are attacking her. Based on the facts as set forth above, Claimant meets the requirements in "A".

According to the evidence presented, Claimant also has marked restrictions in the ability to maintain attention and concentration for extended periods or to interact appropriately with individuals in a social or work setting. Claimant, therefore, meets the criteria in "B" above. Accordingly, the undersigned finds that Claimant meets the list of §12.08 due to her Aspergers Disorder causing her marked difficulties in maintaining social functioning and marked difficulties in maintaining concentration, persistence and pace of activity.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meet or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

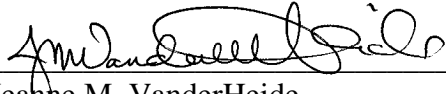
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of June 12, 2009 including retroactive benefits applied for through March, 2009.

Therefore the department is ordered to initiate a review of the application of June 12, 2009, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in April, 2011.

Further, a referral is to be made to Adult Protective Services to consider benefit fund management on behalf of the Claimant; and other actions as necessary.

/s/ 

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 13, 2010

Date Mailed: April 16, 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 60 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.

JV/hw

201017388/JV

cc:

