

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-50000
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 28, 2010
Ingham 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, an in-person hearing was held on September 28, 2010. Claimant personally appeared and testified. Claimant was represented by [REDACTED], [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and retro MA?

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 March 12, 2010, claimant filed an application for Medical Assistance and retro MA benefits alleging disability.
- (2) On May 26, 2010, the Medical Review Team denied claimant's application stating that she had a non-exertional impairment.
- (3) On June 2, 2010, the department caseworker sent claimant notice that her application was denied.

- (4) On August 17, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On August 27, 2010, the State Hearing Review Team also denied claimant's application stating that the medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple and repetitive work, and that there is no evidence of any physically impairing condition.
- (6) Claimant is a 53 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 180 lbs. after gaining 12 lbs. in 3 weeks due to what she states is stress, anxiety and depression. Claimant completed high school and training as a medical assistant, and can read, write and do basic math.
- (7) Claimant states that she does a little cleaning and gardening here and there to pick up extra cash, but that her last job was from October, 2009 to February, 2010 as a part time janitor. Claimant has also worked part time as a cashier until her suicide attempt. Past work history for the last 15 years includes cashier, retail and medical assistant.
- (8) Claimant testified that she is trying to get a job at the [REDACTED] [REDACTED] as a substitute and lunch room aide, playground duty and as a clerk answering phones, and wants to work 16-21 hours per week.
- (9) Claimant lives with her brother in a duplex left to them by their father who passed away. She has a driver's license and drives to [REDACTED] meetings, grocery store if she does not get a panic attack while there, cleans her house, and gardens, cooks, reads, watches TV, cross stitches, hooks rugs and walks in the park to pass the time.
- (10) Claimant alleges as disabling impairments migraine headaches, depression, and anxiety. According to the hearing request, claimant has a suicidal attempt with multiple drug overdoses, major depressive disorder severe, recurrent substance abuse not in remission alcohol and drugs, four suicide attempts, GAF of 40, bipolar disorder, and per the claimant and her family panic attacks and a lot of failed work attempts.
- (11) Claimant has applied for Social Security disability and decision was pending at the time of the hearing.

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).

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, that being a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At Step 1, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 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 404.1572(a) and 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 404.1572(b) and 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 he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At Step 2, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). 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). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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). 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).

At Step 3, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, claimant is not engaged in substantial gainful activity as she testified that she only works several hours per week. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering the claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce the claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The objective medical evidence on the record includes a February 24, 2010 hospital record stating that the claimant was brought into the emergency department by police after a drug overdose. Claimant reported she had swallowed at least 17 Seroquel and an unknown amount of Ativan. She admitted to being depressed for the last week or so and that she had not taken her regularly scheduled Prozac. She also was noted to have been drinking quite a few beers today. Claimant also related that she occasionally uses cocaine.

██████████ psychiatric admit note states that the claimant was admitted on an involuntary basis via ██████████. Claimant acknowledged having taken an overdose of her brother's prescription medications on February 25, 2010 and then drinking and becoming increasingly depressed. Claimant had run out of her Prozac medication four to five days prior to that. Claimant had been sober for approximately one year before relapsing around the time of the Christmas holidays, and had been treated for alcohol dependence at the ██████████ in Lansing last year around this time. Claimant denied any thoughts of suicide or self harm since arriving at the hospital after her overdose attempts, and also denied ever having had auditory or visual hallucinations, grandiose delusional beliefs or other psychotic symptoms.

Claimant felt that Prozac has worked well for her in stabilizing her mood and that it has never precipitated any manic episodes. She has some anxiety in crowds but denied any history of symptoms that would be consistent with panic disorder or agoraphobia. Claimant did acknowledge making a number of suicide attempts in the past, but could not recall the specifics of this.

Claimant reported that this is her first psychiatric hospitalization and that the Prozac is the only medication she had taken and it had been helpful. Claimant had been taking less of the Prozac dosage than it has been prescribed to her.

Mental status examination indicates that the claimant was pleasant and cooperative, appeared alert and oriented to person, place and time, and her speech was normal in rate and volume with no evidence of tangentially or circumstantiality. Claimant did not display psychomotor agitation, retardation or involuntary motor activity. Her thoughts were well organized, logical and goal oriented with no evidence of delusional thinking, and she did not appear to be responding to internal stimuli.

Claimant was diagnosed with major depressive disorder, severe, recurrent without psychotic symptoms, alcohol dependence in partial sustained remission, nicotine dependence, cocaine dependence in full sustained remission, and GAF of 35. Claimant did express some motivation to pursue mental health treatment and will sign into the [REDACTED] on a formal voluntary basis. Prozac dosage will be re-initiated as she had not had any for the past ten days or so.

Claimant was discharged on March 8, 2010 and planned to attend [REDACTED] meetings every day and have follow up care arranged with her nurse practitioner and a therapist. Claimant denied having any thoughts of suicide and had remorse at having taken an overdose and how grateful she was to have survived.

March 9, 2010 Medical Examination Report notes a history of depression and ETOH dependence for the claimant. All of claimant's examination areas were marked as normal, her condition as stable, and she had no physical or mental limitations.

Psychiatric/Psychological Examination Report of April 28, 2010 describes the claimant as clean, neat, calm and coherent, with no bizarre mannerisms. Claimant was able to engage in treatment plan to seek work and rebuild her life, but her motivation is low and she tends to sabotage plans, falls into alcohol use and gambling. Claimant was alert and oriented x3 and had no current suicidal ideation, and attended AA group on a "good day". Claimant's diagnosis was alcohol dependent and bipolar with a GAF of 40. Mental Residual Functional Capacity Assessment indicated only moderate limitations in some areas and no areas with marked limitations.

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 no documented physical impairments, but does have a history of depression for which she has been prescribed medications. Claimant did attempt to commit suicide when she

stopped taking her prescribed medications. Claimant therefore does have a mental impairment that appears to have lasted 12 months, and she has met her burden of proof at Step 2. 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 not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge would have to deny the claimant based upon her ability to perform past relevant work. Claimant's past relevant work was as a janitor, in retail and as a cashier. Claimant testified that she does a little cleaning and gardening here and there to pick up extra cash, and that she is trying to get a job at the local school as a sub, lunch room aide, playground duty and clerk answering phones. Finding that the claimant is unable to perform work which she has engaged in the past cannot therefore be reached and the claimant is denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the [REDACTED], published by the [REDACTED]... 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform tasks from her prior employment, or that she is physically unable to do even heavy work if demanded of her. While the claimant was hospitalized due to an overdose of prescription drugs in February and March, 2010, her suicidal state appears to have been caused by not taking her Prozac and also by using alcohol. Claimant testified that she now goes to ■■■ 2-3 times per week, takes her Prozac, and sees a psychiatrist and a therapist regularly. These actions appear to be resulting in a more stable mental state for the claimant as she had not needed psychiatric hospitalization as of September, 2010 hearing. While the claimant testified that she has panic attacks, records from her psychiatric hospital stay quote her as denying having such attacks. In addition, it does not appear that the claimant would be seeking employment at a school if she was indeed having panic attacks in grocery stores as she also testified. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity to perform other work. Claimant does have mental issues and simple, repetitive work with avoidance of large amount of stress would be appropriate. Claimant is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light, sedentary and medium work, or even heavy work. Under the Medical-Vocational guidelines, an individual closely approaching advanced age (claimant is 53) with a high school education and a history of unskilled work that can perform even only light work is not disabled per Vocational Rule 202.13.

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 mental ability to do basic work activities. 20 CFR 416.920(c). This conclusion is based on claimant's most recent hospitalization and psychiatric evaluation of her mental condition. However, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of

disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance and retroactive Medical Assistance benefits. The claimant should be able to perform a wide range of simple and repetitive light, sedentary and medium work even with her alleged impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED, and it is SO ORDERED.

/s/

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

Date Signed: December 10, 2010

Date Mailed: December 13, 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.

IR/tg

2010-50000/IR

cc:

