

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.: 201010496

Issue No.: 2009, 4031

Case No.:

[REDACTED]

Load No.:

Hearing Date:

March 10, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by in person hearing on March 10, 2010 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on November 17, 2009. Claimant was present and testified. Claimant was represented by [REDACTED] of [REDACTED], [REDACTED], MCW, appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") 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. Claimant applied for MA and SDA as of May 14, 2009.

2. Claimant is 5'3" tall and weighs 182 pounds.
3. Claimant is right handed.
4. Claimant is 50 years of age.
5. Claimant's impairments have been medically diagnosed as colitis, bipolar disorder, osteoporosis, plantar fasciitis and depression.
6. Claimant's physical symptoms are bloody stools and excessive bathroom use during flare ups of colitis, sharp stabbing pain in both feet once a month, pain in side, teeth pain and monthly headaches.
7. Claimant's mental symptoms are racing thoughts, difficulty concentrating, panic attacks in past, anxiety, some confusion, anger, weight gain (70 lbs in last year), sleep disturbances, fatigue, avoidance of public, guilty feelings and hallucinations.
8. Claimant takes the following prescription medication:
  - a) Zantac
  - b) Motrin – 800 mg
  - c) Azecol (colitis)
  - d) Actonel (osteoporosis)
  - e) Doxycycline (acne)
  - f) Ferrous Sulfate
  - g) Provera (menopausal hormone therapy)
  - h) Ambilify
  - i) Klonopin (anxiety)
  - j) Prednisone
  - k) Paxil CR
  - l) Lamictal (bipolar)
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a college degree in accounting.
11. Claimant is able to read/write/perform basic math skills.
12. Claimant last worked in 2000 for the post office as a mail processing clerk. Her job duties included lifting up to 50 lbs. and keying in zip codes with a sit/stand option.
13. Claimant has prior employment experience as accountant for security company processing employee vouchers, rent-a-cards and expense reports.

The job required sitting and lifting. Claimant also worked as an office manager in a group home doing nursing aide type of care (washing patients, serving breakfast, dispensing medication and dressing patients).

14. Claimant performs household chores such as cooking meals (roasts, chicken, port chops, fresh vegetables, salads, baked potatoes), doing dishes, laundry, vacuuming, dusting, washing windows, taking the trash outside and grocery shopping.
15. Claimant presented at the hearing as well groomed and young looking, but Claimant did not follow the questions well.
16. The Department found that Claimant was not disabled and denied Claimant's application on November 20, 2009.
17. The Department received Claimant's request for a hearing on November 17, 2009.
18. Medical records examined are as follows, in part:

1/27/10 Medical Examination Report (Exhibit A)

HX: ulcerative colitis, depression

PHYSICAL LIMITATIONS: None

MENTAL LIMITATIONS: See psych

NOTE: Pt has ulcerative colitis. This is an episodic disease that can lead to disability during flare ups.

10/14/09 Mental Progress Note (Exhibit 1, p. 37)

Complaints include seeing hallucinations, anxiety, irritability, sadness and hearing voices. These symptoms have been present for greater than ten years.

MENTAL STATUS EXAM: Pt demonstrated sadness, irritable behavior, average intelligence, non command auditory hallucinations and visual hallucinations.

ASSESSMENT: Bipolar I Disorder, Most Recent Episode Depressed, Severe with Psychotic features.

FORMULATIONS: Pt compliant with medications but remains symptomatic. Psychotherapy was recommended.

GAF: 48

6/3/09 Family Practitioner Medical Exam Report (Exhibit 1, pp. 7-8)

MUSCULOSKELETAL: Plantar heel tenderness decreased dorsiflexion

PHYSICAL LIMITATIONS: Lifting up to 25 lbs frequently, stand/walk 6 hrs in 8 hour work day, sit 6 hours in 8 hour work day.

MENTAL LIMITATIONS: **Limited in social interaction due to depression.**

6/29/09 Mental Health Services Plan (Exhibit 1, pp. 29-36)

Bimonthly therapy for one year

6/12/09 Psycho-Social Assessment – Annual Update (Exhibit 1, pp. 40-42)

Consumer continues to require Psychiatric services for medication prescription and regular medication reviews in effort to prevent decompensation and the need for hospitalization. She will comply with therapy appts scheduled once weekly to monitor, evoke change and reduce symptoms of depression and to encourage medication compliance.

12/21/08 Annual Psychiatric Evaluation (Exhibit 1, pp. 38-39)

Medications have been beneficial, Patient admits to seeing things that are not there. Pt also complains of slurred speech.

ASSESSMENT: Bipolar I Disorder, most recent episode depressed, severe without psychotic features.

GAF: 48

5/22/08 Psycho-Social Assessment (Exhibit 1, pp. 23-28)

HX: Pt reported that she began hearing voices a few years ago and the experiences resulted in her hospitalization. According to her report, pt has responded well to medication and that she is very pleasant And calm when she is medicated. Her tolerance is much better when she is medication compliant, but stated that sometimes she does not take her medication and the symptoms exacerbate.

DX: Bipolar I Disorder, Most Recent Episode Depressed, Severe without psychotic features. Consumer has met the criteria for both manic and depressive episodes nearly everyday. **The disturbance in mood has been severe enough to cause marked impairment in relationships and daily functioning.** The symptoms are not due to the direct physiological effects of a substance or a general medical condition.

MEDICATION HX/COMPLIANCE: CI is currently medication complaint and is not experiencing any ill effects of the medication. “I feel much better and I don’t hear all that other noise when I’m taking my medicine.”

5/29/09 Psychiatric/psychological Exam Report (Exhibit 1, pp. 19-20)

Bipolar I Disorder, most recent episode depressed, severe w/o psychotic factors

GAF: 55

Markedly Limited as follows:

1. The ability to respond appropriately to change in the work setting
2. The ability to be aware of normal hazards and take appropriate precautions.

Moderately limited in ALL other categories

4/29/05 Bone Density Test (Exhibit 1, p. 9)

Pt’s bone density was found to be slightly below normal.

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, the Claimant has not worked for the past ten (10) years. 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 (6<sup>th</sup> 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 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence of severe bipolar disorder with psychotic features that has been ongoing for years. Claimant also has ulcerative colitis that causes physical limitations during flare ups. Claimant has been found markedly limited in her social interactions and daily functioning. Therefore, the medical evidence has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months.

### **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. In this matter, the medical records establish a diagnosis of severe bipolar disorder with psychotic features. After reviewing the criteria of listing 12.04 *Affective*

*Disorders*, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meet or are medically equivalent to the listing requirements. 20 CFR 416.920(a)(4)(iii). 20 CFR 404 §12.04 describes the mental listing as follows:

*Affective Disorders:* Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

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

- A. Medically documented persistence, either continuous or intermittent of one of the following:
  - 1. Depressive syndrome characterized by at least four of the following:
    - a. Anhedonia or pervasive loss of interest in almost all activities; or
    - b. Appetite disturbance with change in weight; or
    - c. Sleep disturbance; or
    - d. Psychomotor agitation or retardation; or
    - e. Decreased energy; or
    - f. Feelings of guilt or worthlessness; or
    - g. Difficulty concentrating or thinking; or
    - h. Thoughts of suicide; or
    - i. Hallucinations, delusions or paranoid thinking; or
  - 2. Manic syndrome characterized by at least three of the following:
    - a. Hyperactivity; or
    - b. Pressure of speech; or
    - c. Flight of ideas; or
    - d. Inflated self-esteem; or
    - e. Decreased need for sleep; or
    - f. Easy distractibility; or
    - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
    - h. Hallucinations, delusions or paranoid thinking;

Or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes).

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 the present case, Claimant has been medically diagnosed with severe bipolar with psychotic features. Claimant has had symptoms of hallucinations both auditory and visual and sadness in excess of 10 years. In addition, Claimant testified to fatigue, sleep disturbances, guilt feelings and avoidance of public. Accordingly, the Administrative Law Judge finds that Claimant meets the requirements in both 12.04(A)(1) and 12.04(A)(3).

Furthermore, Claimant's treating psychiatrist found Claimant's mood disturbance "severe enough to cause marked impairment in relationships and daily functioning". In addition, Claimant was most recently assigned a GAF of 48 during a stable period by her treating psychiatrist. This GAF score is defined as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." Accordingly, the undersigned finds that Claimant meets the listing of 12.04(B) due to her bipolar disorder.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets 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.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

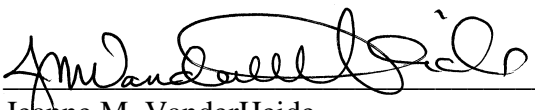
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

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 and SDA programs.

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 May 14, 2009 including retroactive benefits applied for.

Therefore the department is ordered to initiate a review of the application of May 14, 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 July, 2011.

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

Date Signed: June 30, 2010

Date Mailed: June 30, 2010

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JV/hw

cc: 