

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: 201017579
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on June 10, 2010.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

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 applied for MA-P and SDA on August 18, 2009.
- (2) Claimant is 43 years old.
- (3) Claimant has a high school education, 2 years of college education, and nurse's assistant training.

- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of a direct care aid and a clinical nurse's assistant at nursing homes, where claimant cooked, cleaned, administered medication to patients, and engaged in heavy lifting.
- (6) On [REDACTED], a MRI of claimant's right shoulder showed a full-thickness tear of the supraspinatus tendon.
- (7) On [REDACTED], claimant was received at a hospital emergency room for an ankle sprain that was later diagnosed as tendonitis following a MRI on [REDACTED]. Claimant wears a supportive boot.
- (8) On [REDACTED], claimant's treating source completed an annual psychiatric evaluation and diagnosed claimant with schizoaffective disorder and polysubstance dependence in remission.
- (9) Claimant's treating source noted that claimant has a violent past and one recent suicide attempt.
- (10) Claimant received a GAF of 50.
- (11) Claimant's treating source completed a Mental Residual Functional Capacity Assessment dated [REDACTED], and noted that claimant is markedly limited in several categories, including her ability to understand and remember detailed instructions, ability to sustain a ordinary routine without supervision, and ability to interact appropriately with the general public and coworkers.
- (12) A DHS-54, Medical Needs, was completed by claimant's treating source on [REDACTED].

- (13) Claimant's treating source states in this form that claimant has been diagnosed with Bipolar Disorder NOS.
- (14) Claimant's treating source opines that claimant is unable to work at usual occupations and unable to work at any job for an indefinite term.
- (15) A DHS-49, Medical Examination Report, was completed by claimant's treating source on [REDACTED].
- (16) Claimant's functional capacity is limited, and only retains the capacity to lift less than 10 lbs frequently, occasionally lift up to 20 lbs, and never lift more than 20 lbs. Claimant should not stand or walk more than 2 hours in an 8 hour day, retains capacity for pushing and pulling, reaching, simple grasping, and fine manipulation only with her left hands/arms, and has a stable condition. Claimant is limited in her ability to sustain concentration.
- (17) On [REDACTED], an independent psychological exam performed in response to claimant's application for SSI benefits diagnosed claimant with schizoaffective disorder and bipolar disorder with a guarded prognosis.
- (18) The independent examiner noted that claimant is markedly limited in several categories, including the ability to maintain social functioning, ability to engage in activities of daily living and ability to maintain concentration, persistence, or pace.
- (19) Claimant received a GAF of 40.
- (20) On January 8, 2010, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing other work under the Medical/Vocational grid rules found at 20 CFR 416.920(f).

- (21) On January 26, 2010, claimant filed for hearing.
- (22) On February 19, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that claimant was capable of performing other work.
- (23) SHRT concluded that claimant was capable of a wide range of simple, unskilled, light work that avoid frequent reaching with her shoulder, denying claimant's MA-P under vocational rule 202.20.
- (24) On June 10, 2010, a hearing was held before the Administrative Law Judge.

CONCLUSIONS OF LAW

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).

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).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of a schizoaffective disorder and bipolar disorder that has rendered her unable to interact appropriately with coworkers and the public and unable to maintain concentration, persistence, or pace, according to the great weight of the evidence by both the Department and claimant's treating sources. Additionally,

claimant's treating sources specifically stated that claimant is unable to engage in any form of job for an indefinite duration, and claimant's existing condition is expected to last more than 90 days. Claimant's medical records show that claimant has had this condition for several years. The Administrative Law Judge finds that this is a significant impairment to claimant's performance of basic physical work activities, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

After considering the listings contained in Section 1.00 (Musculoskeletal), the Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. However, the great weight of the evidence of record finds that claimant's mental impairment meets or equal the listings for mental impairments contained in section 12.00 (Mental Impairments).

Appendix 1 of Subpart P of 20 CFR 404, Section 12.00 has this to say about mental disorders:

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section

cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings...

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the diagnostic description, that is manifested by the medical findings in paragraph A...

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation.

Where we use "marked" as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis. See §§ 404.1520a and 416.920a.

12.04 *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....

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
 - 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: ...
 - 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndrome (and currently characterized by 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;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment

would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In order to meet or equal the listings for mental impairment, a claimant must either meet or equal the recommended listings contained in both the A and B criteria, or meet or equal the listings in the C criteria. After examination of the C criteria, the undersigned holds that claimant does not meet this listing. However, a careful examination of claimant's medical records, both supplied from a treating source, and from an independent Department examiner, show claimant meets both the A and B criteria.

Claimant's psychological reports, as well as those administered by the Department, show documented persistence of claimant's schizoaffective disorder and bipolar disorder. Claimant's records also show an individual with decreased energy, with frequent thoughts of worthlessness and hallucinations, which led to two suicide attempts and multiple acts of violence toward others. Finally, claimant's treating sources stated that claimant experienced marked difficulties in 6 of the 8 Sustained Concentration and Persistence categories, with moderate limitations in 2 others (including the ability to make simple work-related decisions), leading to a well supported conclusion that claimant has difficulties in concentration and thinking. An independent examiner made similar statements following a mental status evaluation for the purposes of an SSI examination. Therefore, the undersigned holds that claimant meets or equals the listings found in the A criteria.

With regards to claimant's activities of daily living, the testimony and evidence of record show that while claimant has moderate difficulties in maintaining her daily activities, these do not rise to the marked level. Claimant does not participate in household chores. These

limitations appear to be based upon a combination of claimant's mental disabilities and her physical disabilities. Claimant testified that she no longer prepare meals, because she burned down the kitchen on one occasion, while cooking, as a result of her inability to maintain concentration. All sources remarked that claimant had good hygiene; however, claimant testified that she requires extensive assistance from her daughter when grooming and dressing as a result of her shoulder pain. Claimant testified that she does try to read, and will listen to music, and will watch TV. While the Administrative Law Judge is somewhat concerned with claimant's activity level, the ultimate impression given by the claimant is that her difficulties in maintaining her activities of daily living are moderate at best.

Claimant also has difficulties in maintaining concentration, persistence and pace.

Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. These limitations must be of such an extent that claimant is held to be markedly impaired with regard to concentration persistence and pace. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

As stated above, in a typical Mental Residual Functional Capacity assessment, 8 categories are dedicated to Sustained Concentration and Persistence. Claimant received a rating from her treating source of "markedly limited" in 6 of these categories, including the categories of "ability to carry out detailed instructions", "ability to maintain attention and concentration for extended periods", "ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances", "ability to sustain an ordinary routine without supervision", "ability to work in coordination or proximity to others without being distracted by them", and the "ability to complete a normal workday and worksheet without interruptions from

psychological based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods”. Furthermore, claimant received a rating of “moderately limited” in 2 other categories—the “ability to carry out simple, one of two-step instructions” and the “ability to make simple work related decisions”. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007); restated (again) in *Hensley v. Commissioner*, No. 08-6389 (6th Cir. July 21, 2009). The undersigned sees no reason to discount claimant’s treating source opinions, as they are consistent with two psychiatric reports—one obtained from an independent source—and the undersigned’s own hearing observations, and thus accepts this Mental RFC assessment as accurate.

Therefore, as these categories are exactly what were contemplated by the listings for the B criteria, the undersigned holds that claimant is markedly limited in maintaining concentration, persistence and pace.

Finally, *social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR 404 App 1, Sub P, 12.00 (C)(2). Claimant’s mental RFC notes, with regard to social interactions, that claimant was markedly limited in her ability to interact appropriately with the general public, ability to accept instructions and respond appropriately to criticism from supervisors, ability to get along with co-workers and peers without distracting them or exhibiting behavioral extremes, and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. Claimant was rated as moderately limited in her ability to ask simple questions.

While this assessment shows claimant's is markedly impaired on maintaining social functioning in a work-related environment, the listings do not limit social functioning to this area. Social functioning is specifically defined as a general ability to maintain social functioning with individuals. Thus, while the mental RFC is useful in examining one area of claimant's life, it is hardly useful in examining all of her general social interactions.

However, the evidence of record is more than enough to fill in the gaps. Claimant testified that she spends most of her time indoors, away from the public. Claimant does not do her own shopping. The independent Department examiner remarked that claimant is very isolative. Claimant has an extensive history of violent outbursts towards other people. More importantly, claimant has been given a GAF of 40 by the independent Department examiner, and a GAF of 50 by her treating source. A GAF between 31-40 is generally defined as having some impairment in reality testing or communication or major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood, while a GAF between 41-and 50 is generally defined as having a serious impairment in social, occupational, or school functioning. These GAF scores would be consistent, considering the record as a whole, with an individual with a serious impairment in social functioning.

Therefore, when combining claimant's Mental RFC assessment, and claimant's psychiatric record, including claimant's GAF scores, the Administrative Law Judge is able to hold that claimant is markedly impaired in social functioning.

As claimant is markedly impaired in concentration, persistence and pace, and social functioning, the Administrative Law Judge holds that the claimant meets the B criteria in the listings for mental impairments.

As claimant meets both the A and B criteria, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 12.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed above, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well. The

Department is further ORDERED to initiate a review of claimant's disability case in July, 2011.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/02/10

Date Mailed: 07/08/10

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.

RJC/dj

cc:

