

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: 2010-23742
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2010
Lenawee 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, a telephone hearing was held on April 14, 2010. Claimant personally appeared and testified along with her mother [REDACTED].

ISSUE

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

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 October 5, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On February 22, 2010, the Medical Review Team denied claimant's application finding her not disabled.
- (3) On February 22, 2010, the department caseworker sent claimant notice that her application was denied.
- (4) On March 1, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (5) On March 15, 2010, the State Hearing Review Team (SHRT) also denied claimant's application stating that the medical evidence of record indicates that she retains the capacity to perform a wide range of simple and repetitive work with limited contact with the general public, and that she has no physical limitations. SHRT used Vocational Rule 204.00 as a guide.
- (6) Claimant is a 27 year old woman whose birthday is [REDACTED]. Claimant is 5'2" tall and weighs 120 lbs. Claimant completed high school and has a massage therapy school certificate, and can read, write and do basic math.

(7) Claimant testified that she is currently working part time, 20-30 hours per week, at Malibu Tan where she does massage therapy and sales work. Claimant has held this job since January, 2009 until she was hospitalized, then went back to work on February 1, 2010. Claimant has also worked at a massage and tanning business for 6 months until she violated her probation and went to jail in 2007. Claimant has also worked at Taco Bell part time from November, 2007 to January, 2009.

(8) Claimant alleges as disabling impairments bipolar disorder, prescription drug abuse and polysubstance abuse, and also alcohol abuse for multiple years. Claimant also alleges depression.

(9) Claimant has not applied for Social Security disability 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).

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 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 one, 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 two, 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 three, 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 working 20-30 hours per week but her hours vary. Conclusion that she is engaged in substantial gainful activity cannot be reached with certainty. 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 psychological examination narrative report of unknown date completed for the department. Claimant was dressed in clean clothing, had adequate hygiene, and was pleasant and cooperative throughout the interview. Claimant reported having 13 jobs in total over the years, 4 of them being in massage therapy, and longest job being 14 months. Claimant stated she is currently being treated for [REDACTED] by Lenawee Community Mental Health Authority (LCMHA), and is prescribed [REDACTED] and [REDACTED] by that agency. She has been psychiatrically hospitalized once, in August 2009, after she threatened to commit suicide and her mother called 911. Claimant has been in outpatient treatment on and off since the age of 19, and has also had several inpatient and outpatient substance abuse treatments. Claimant also admitted to significant past problems with alcohol and drugs including marijuana and ecstasy.

Mental status examination showed the claimant's mood to be flat and she stated she is typically depressed. Claimant denied current suicidal ideation or having ever experienced hallucinations. She appeared of normal intelligence. Claimant was of normal alertness and oriented x3. She evidenced adequate attention span, and her concentration and long and short term memory were adequate, as were her abstract reasoning skills and fund of knowledge. Claimant had always lived at home with her

mother, never being stable enough to be out on her own. She has no driver's license due to past DUI convictions. Diagnoses were that of major depressive disorder, recurrent, severe without psychosis, alcohol dependence in early sustained remission (4 months), and current GAF of 42. No evidence of malingering was noted.

August 3, 2009 medical evaluation states that the claimant was admitted to the medical center after her mother called the police saying she threatened to kill herself. Claimant said that her mother lied and she did not need to be there. Claimant related that her father, whom she was not close to, committed suicide three weeks ago. While the claimant appeared restless and agitated and had tearful, irritable and angry affect, her thought process was linear and goal-directed and she denied suicidal or homicidal ideation, active intent or plan. No paranoid ideation or delusions were noted, and claimant denied auditory, visual or tactile hallucinations. Cognition appeared grossly intact, but insight and judgment were poor. Impressions were that of depression, substance abuse and GAF of 20-30. Risk assessment was that the claimant was currently dangerous to self or others, due to recent loss in the family, and she required acute inpatient psychiatric admission with estimated length of stay five to seven days.

September 21, 2009 psychiatric history and physical report from Hillsdale Community Health Center indicates that the claimant's August, 2009 hospitalization lasted 12 days. Claimant had now become angry the day before because her mother would not give her the truck key so she could go and buy [REDACTED] off the street, threatened to kill herself, and made superficial cut on her wrists. Police were called and claimant was found in the woods where she ran off to because she did not want to be hospitalized. Claimant's mother signed a petition for involuntary commitment. Claimant was angry and did not want to talk about anything except to get out of the hospital. Diagnoses was that of bipolar mood disorder, mixed, with suicidal ideation, marijuana abuse, narcotic pain medication abuse, and GAF of 25. Plan was to have the claimant stay in the hospital about 5-7 days due to her noncompliance to the treatment.

Medical Examination Report completed during the September, 2009 hospital stay indicates as claimant's history of impairments psychiatric problem including abuse of medications, and as her diagnosis bipolar disorder with current depressive episode. Psychiatric medical evaluation indicates that the claimant admitted to using [REDACTED] and [REDACTED] which she obtains without a prescription. Mental Residual Functional Capacity Assessment indicates that the claimant has no evidence of limitation in categories of understanding and memory and sustained concentration and persistence, is markedly limited in the social interaction category, and also markedly limited in the ability to respond appropriately to change in work setting.

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's impairment has lasted 12 months. Claimant has therefore met her burden of proof at Step 2 and analysis continues.

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 massage therapist and sales work, job she was performing at the time of the hearing. Finding that the claimant is unable to perform work which she has engaged in 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 *Dictionary of Occupational Titles*, published by the Department of Labor... 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 medium work if demanded of her, as her medical record does not show any physical limitations. 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 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. Under the Medical-Vocational guidelines, a younger individual age 18-44 (claimant is 27), with high school education and an unskilled work history who can perform medium work is not considered disabled pursuant to Medical-Vocational Rule 203.28.

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. This conclusion is based on giving great weight to claimant's two hospitalizations and psychiatric reports stating she would have issues with frequent contact with the general public. It is noted that the claimant's mental state was however affected not only by personal issues such as her father's suicide, but also by her abuse of prescription drugs and alcohol which has lasted for many years. It is questionable if the claimant would have needed hospitalization if she was not a substance abuser, and hopefully her abstinence from drugs and alcohol to which she testified during the hearing will continue. As the claimant is capable of past relevant work and is performing it, and is also capable of other work, 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.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 State Disability Assistance benefits. The claimant should be able to perform a wide range of 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: _____

Date Mailed: _____

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

cc: 