

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: 2010-5582
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 12, 2010
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 January 12, 2010. Claimant personally appeared and testified. He was assisted by

[REDACTED].

ISSUE

Did the department properly determine claimant is not disabled by Medicaid (MA)/retro-MA eligibility standards?

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 is a single, left-handed, 47-year-old male with a 1989 Bachelor's Degree (German/English) who stands 6'3" tall and is medically obese at 250 pounds (BMI=31.2); he is left hand dominant, per self report.

(2) Claimant was diagnosed with adult Asperger Syndrome (AS) in 2007 (Client Exhibit A, pg 1 and Client Exhibit J, pgs 1-10).

(3) Claimant has an unskilled work history in bookstore clerking, theatre ushering and newspaper delivery/circulation, but he has remained unemployed since 2004 due to several difficulties in social interaction combined with chronic depression and ongoing fatigue attributed to his AS disease (Department Exhibit #1,pg 19).

(4) However, even before this diagnosis, claimant's psychiatric history evidences multiple psychiatric commitments (both voluntary and involuntary) beginning at age 16 with several suicide attempts and recurrent suicidal ideation.

(5) Claimant was most recently hospitalized on June 23, 2009, secondary to an acute exacerbation of depression, agitation and homicidal thoughts (Department Exhibit #1, pg 13).

(6) On August 12, 2009, the department approved the disability-based cash portion of claimant's disputed application (SDA) filed on May 14, 2009, but denied the MA/retro-MA portion of this application.

(7) On January 12, 2010 claimant's appeal hearing was held.

(8) Medical records submitted at hearing include a physical assessment by claimant's treating doctor dated June 16, 2009, which evidences no severe physical impairments but reveals claimant presented with a flat affect and was unable to make eye contact throughout the exam; consequently, this physician assessed claimant as being limited in social interaction secondary to the AS diagnosis Department Exhibit #1, pgs 15-17).

(9) A June 12, 2009, mental assessment done by the [REDACTED], [REDACTED], assesses claimant with moderate limitations in his ability to maintain socially appropriate behavior and marked limitations in many other social interaction categories such as his ability to respond appropriately to changes in work settings, to be aware of normal workplace hazards and to set realistic goals (i.e., severe adaptation difficulties)(Department Exhibit #1, pgs 6 and 7).

(10) Claimant has maintained compliance with outpatient counseling at the [REDACTED] since his most recent psychiatric hospitalization (Client Exhibits D-H).

(11) Claimant's persistent symptoms include depression, social isolation, seclusiveness, sleep disturbances, lack of energy, difficulties in thought and concentration, feelings of guilt and worthlessness and thoughts of suicide.

(12) An October 2008 independent mental status evaluation assesses claimant with Personality Disorder, NOS and Anxiety/Depressive/Bipolar Disorders, NOS, but not Asperger's Syndrome (AS).

(13) Nevertheless, even this independent examiner concludes:

[Claimant] is clearly in need of further assessment and mental health intervention. It is expected that [claimant] could understand simple instructions in the work environment, although given his level of anxiety and current mental state he would likely have difficulty retaining information and carrying out instructions in a timely manner. It is also expected that he would have problems following through with complex or step-ordered instructions. On the basis of this examination, it seems clear that [claimant] has poor coping mechanics and he is likely to experience difficulty adapting to changes in the work environment and relating appropriately to supervision and co-workers. Given the chronic nature of his mental health impairment and lack of appropriate treatment, it is expected that any therapeutic process would be slow and long-term. His present prognosis is guarded (Client Exhibit L, pgs 1-7).

(14) Additionally, a December 9, 2009 assessment done on claimant by the Asperger Ability Company is consistent with the above-referenced opinion:

[Claimant's] Asperger's impacts his employability in numerous ways. His executive functioning skills (planning, organizing, ability to relate cause and affect, inability to handle distractions "one tract mind," lack of flexibility, inability to multitask) are very inconstant. For example, he has been able to self-teach himself several languages, but cannot function in a normal work environment without being totally distracted. Individuals tend to "hyper-focus" and once they focus on a particular topic/task it is impossible for them to redirect themselves without intervention.

Communication skills and social interaction abilities are below the norm in individuals with Asperger's. Teamwork skills are a stumbling block. [Claimant] is not a "group" person. In most work environments, he would be at a loss to understand social cues, office politics, etc. He is a linear thinker which leads to problems with authority and making a decision as to when and how to request assistance. In any individual with Asperger's Syndrome, there tends to be a great deal of underlying stress and anxiety relating to the ability to perform. The thought process is always black and white-little or no understanding of "grey" (Client Exhibit K, pgs 1 and 2).

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

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. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

...Where "marked" is used 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, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively, and on a sustained basis. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

We do not define "marked" by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that

you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...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. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

...In work evaluations, concentration, persistence, or pace is assessed by testing your ability to sustain work using appropriate production standards, in either real or simulated work tasks (e.g., filing index cards, locating telephone numbers, or disassembling and reassembling objects). Strengths and weaknesses in areas of

concentration and attention can be discussed in terms of your ability to work at a consistent pace for acceptable periods of time and until a task is completed, and your ability to repeat sequences of action to achieve a goal or objective. 20 CFR 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #1-#14 above, this Administrative Law Judge answers:

Step #1: No.

Step #2: Yes.

Step #3: Yes.

Claimant's mental health records manifest severe difficulties starting in his teenage years and continuing through the present time. These mental impairments have been documented severe enough to meet or equal Listings 12.04 (Affective Disorders) and/or 12.08 (Personality Disorders) and/or 12.10 (Autistic Disorder and other pervasive developmental disorders), depending on which professional's assessment is considered most accurate. Nevertheless, one thing is certain. None of the treating or consulting specialists opines claimant is capable of fully

functioning in a work setting. As such, the department's denial of his disputed MA/retro-MA application simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining claimant was not disabled at all times relevant to the filing of his May 14, 2009 MA/retro-MA application.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and reprocessing to determine whether claimant meets all of the other financial and non-financial eligibility factors necessary to qualify for MA/retro-MA under that application. **SO ORDERED.**

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 17, 2010

Date Mailed: May 18, 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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cc:

[REDACTED]