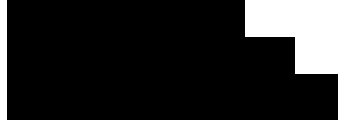


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010768

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 18, 2009

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 November 18, 2009.

ISSUE

Was the denial of claimant's application for MA-P 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 Retro MA-P on July 15, 2009.
- (2) Claimant is 23 years old.
- (3) Claimant has a high school education and one year of college.
- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of a janitor, a construction worker, a mover, and a stockperson.

- (6) Claimant has a history of depression, anxiety, bipolar disorder and suicide attempts.
- (7) On [REDACTED], claimant was admitted into [REDACTED] after attempting suicide by overdosing on medication.
- (8) Claimant was diagnosed with bipolar depression.
- (9) Claimant exhibited depression, mood swings, irritability, insomnia, and suicidal thoughts, namely fantasies of driving into oncoming traffic.
- (10) Claimant's affect was sullen and his mood was depressed, anxious, labile, and emotional with mood swings.
- (11) Claimant has limited insight with moderate judgment.
- (12) Claimant received a GAF of 20 with a guarded prognosis.
- (13) On [REDACTED], claimant was discharged with a GAF of 65 and a guarded prognosis.
- (14) On [REDACTED], claimant was seen at [REDACTED] for a left forearm laceration. Claimant reported that he accidentally cut his left forearm at [REDACTED] with a knife.
- (15) Claimant was discharged that day.
- (16) On [REDACTED], claimant was admitted into [REDACTED] Hospital with report of thoughts of suicide, specifically, a desire to overdose on medication.
- (17) Claimant was diagnosed with bipolar affective disorder.
- (18) Claimant was mildly anxious and appeared sad.
- (19) Claimant was attentive with appropriate concentration.

- (20) Claimant exhibited unsteady gait and walked with a cane, probably due to complaints of muscle pains due to fibromyalgia.
- (21) Claimant's memory was intact.
- (22) Claimant expressed feelings of helplessness and hopelessness with plans for suicide.
- (23) Claimant received a GAF of 40 at admission.
- (24) On [REDACTED], claimant was discharged with referral to [REDACTED].
- (25) On [REDACTED], claimant was again admitted into [REDACTED] following an overdose of medication on [REDACTED].
- (26) Claimant reported feeling panicky on [REDACTED] and took more medication than prescribed.
- (27) Claimant expressed feelings of helplessness and hopelessness with plans for suicide.
- (28) Claimant's gait was steady.
- (29) Claimant received a GAF of 40 at admission.
- (30) On [REDACTED], claimant was discharged after claimant's treating source was unable to persuade claimant to remain hospitalized for further treatment.
- (31) On July 20, 2009, the Medical Review Team denied MA-P, stating that claimant's impairments are non-exertional impairments.
- (32) On August 19, 2009, claimant filed for hearing.

- (33) On October 9, 2009, the State Hearing Review Team denied MA-P and Retro MA-P, stating that claimant's condition is improving or is expected to improve within 12 months from the date of onset.
- (34) On November 18, 2009, a hearing was held before the Administrative Law Judge.
- (35) The record was held open for the submission of new evidence.

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).

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 he 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 more than sufficient evidence of a severe mental impairment that has more than a minimal effect on the claimant’s ability to do basic work activities. Claimant’s medical records show an individual suffering from bipolar disorder, anxiety, and depression with multiple suicide attempts and frequent thoughts of suicide. While these impairments and symptoms may not affect claimant’s physical functions, such as walking, standing, lifting and pushing, it does affect claimant’s ability to use judgment and interact appropriately with others in the workplace and in the public. Furthermore, there is no evidence in the record that claimant is improving or that his disability will improve; in fact, the evidence of the record

shows that claimant has gotten worse since his initial applications. Claimant thus easily passes step two of our evaluation.

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.

Claimant alleges disability due to fibromyalgia and mental impairments. While fibromyalgia is not a listed impairment, on several occasions the Sixth Circuit has recognized the medical diagnosis of fibromyalgia as a basis for receiving disability benefits. See *Rogers v. Comm'r of Soc. Sec.*, 486 F.3d 234, 244 (6th Cir. 2007). However, fibromyalgia is diagnosed through a process including, "the testing of a series of focal points of tenderness and the ruling out of other possible conditions through objective medical and clinical trials." *Id.* None of the medical evidence thus far presented to the Administrative Law Judge contains any indications of the above. Claimant's medical records only contain occasional reports of fibromyalgia; no formal test results or diagnoses of fibromyalgia are in the record. Although, on [REDACTED], claimant's treating source at [REDACTED] noted that claimant has unsteady gait and uses a cane due to muscle weakness, likely associated by fibromyalgia, it is the only report of unsteady gait in the claimant's medical records.

Notably, claimant's treating source reported that claimant's gait was steady during his last documented hospitalization on [REDACTED]. Therefore, the Administrative Law Judge concludes that claimant does not have a disabling condition that meets the medical severity listings for fibromyalgia.

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...
 - c. Sleep disturbance; or...
 - e. Decreased energy; or...
 - f. Feelings of guilt or worthlessness; or...
 - h. Thoughts of suicide; or...

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 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 bipolar disorder, depression, and anxiety. The documented medical evidence paints a depressed, suicidal individual. Claimant admitted to sleep disturbance, which is documented by claimant's treating sources during his frequent hospital visits. Claimant's records also show an individual with decreased energy, with frequent thoughts of worthlessness and frustration, which led to frequent thoughts of suicide and at least two suicide attempts. 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 claimant has moderate difficulties in maintaining his daily activities; however these do not rise to the marked level. Activities of daily living include adaptive activities such as cleaning, shopping, cooking, taking public transportation, etc., and the extent to which a claimant is capable of initiating and participating in activities independent of supervision or direction. Marked difficulty in maintaining activities of daily living is not defined 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. 20 CFR 404 App 1, Sub P, 12.00 (C)(1).

In the current case, claimant participates in household chores, cook, drive, go grocery shopping, and yard work. However, on [REDACTED], claimant's mother reported that claimant is never left alone at any time while he is at home. While this statement may suggest that claimant is under constant supervision, it can also be interpreted as indicating that someone is always at home with the claimant, not necessarily for supervising purposes, but rather, to protect the claimant from self-harm. Claimant's medical records contain no other indication of a need for constant

supervision of daily activity outside of claimant's three hospitalizations in 2009. Therefore, the Administrative Law Judge finds that the ultimate impression given by the claimant is that his difficulties in maintaining his activities of daily living are moderate at best.

Claimant appears to have no 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. In psychological tests of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

Claimant's medical records contain no indication of a memory or concentration impairment. On [REDACTED], claimant was admitted into [REDACTED] [REDACTED] for suicidal ideations. Claimant's treating source reported that claimant's memory was intact. Claimant was able to recall names, dates and events without any difficulty. More importantly, claimant has no difficulty recalling 3 objects after 3 minutes. Claimant's medical records contain no medical evidence that claimant has any difficulty maintaining concentration persistence or pace. Therefore, the Administrative Law Judge concludes that claimant does not have a marked difficulty in maintaining concentration, persistence, or pace.

The number of episodes of decompensation that claimant experienced is another matter. *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. 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 combination of the two. The term repeated episodes of decompensation, each of extended duration means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks. If a claimant has more frequent episodes of shorter duration or less frequent episodes of longer duration, judgment must be made on the duration and functional effects of the episodes to substitute for the listed findings in a determination of equivalence. 20 CFR 404 App 1, Sub P, 12.00 (C)(4).

Claimant's medical records documents three episodes of decompensation and one suspected case of decompensation in 2009. Claimant was first admitted into [REDACTED] on [REDACTED] following overdose on medication. Claimant reported wanting to drive into oncoming traffic. Claimant exhibited symptoms including, anxiety, insomnia, mood swings, irritability, and feelings of helplessness and hopelessness. Claimant's affect was sullen, and his mood was depressed, anxious, labile, and emotional with mood swings. Claimant's insight was limited. Claimant was given a GAF of merely 20 with a guarded prognosis at admission. Claimant was placed on suicidal precaution. Claimant was discharged on [REDACTED] with a GAF of 65.

On [REDACTED], claimant was again admitted into [REDACTED] [REDACTED] with report of suicidal ideation. Claimant appeared sad and mildly anxious. Claimant expressed feelings of helplessness and hopelessness with plans for suicide. Claimant was given a GAF of 40. Claimant was discharged on [REDACTED].

However, merely 2 days later, on [REDACTED], claimant was readmitted into [REDACTED] following report of medication overdose on [REDACTED]. Claimant reported feeling panicky on [REDACTED], and took more medication than prescribed. Claimant received a GAF of 40 at admission. Claimant was discharged from the hospital the following day, after the treating physicians at [REDACTED] were unsuccessful in persuading claimant to remain hospitalized for treatment.

Claimant's medical records do not contain evidence that satisfies the standard requirements for repeated episodes of decompensation, namely 3 episodes in 1 year or an average of 1 episode every 4 months, each of 2 weeks duration. However, a finding for repeated episodes of decompensation can still be made when considering the frequency, severity, and duration of each episode. Claimant's first episode in [REDACTED], was severe. Claimant attempted suicide by overdosing on medication and received a GAF of merely 20. Claimant's hospitalizations in [REDACTED], were only 2 days apart. On both occasions, claimant received a GAF of only 40, and the duration of hospitalization would have been longer had the claimant not insisted on being discharged. The evidence of record indicates medical equivalence to the listing, if not meeting the listing word for word. Claimant may not have been treated for exactly two weeks with each episode, but the severity of the episodes, combined with claimant's unique situation is enough to warrant much consideration. Therefore, the Administrative Law Judge concludes that claimant's mental impairments resulted in repeated episodes of decompensation, each of extended duration.

Finally *social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. It includes the ability to get along with others, such as family members, friends, neighbors, grocery

clerks, landlords, or bus drivers. Marked difficulty in maintaining social function is not defined by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. 20 CFR 404 App 1, Sub P, 12.00 (C)(2). The listings do not limit social functioning to the work environment. Social functioning is specifically defined as a general ability to maintain social functioning with individuals.

Claimant has marked difficulty in maintaining social function. Claimant testified that he does grocery shopping, has a few friends and a fiancée. Medical records show that claimant is generally cooperative at interviews and engages in some group therapy during hospitalization. However, cooperation and participation in group activity within a hospital environment is not indicative of claimant's ability to function socially outside of that environment. On [REDACTED], claimant reported having a turbulent relationship with his fiancée due to his depression. Claimant reported that his fiancée does not tolerate his depression and threatened to leave him during past episode of depression. More importantly, at claimant's last documented hospital admission, on [REDACTED], claimant has been given a GAF of 40 by his treating sources. A GAF between 31-and 40 is generally defined as having a major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood. Although this GAF score was given at the time of admission, when considering that claimant was discharged the very next day, upon his own insistence, the change in claimant's GAF would not have been significantly different at the time of discharge. Even if claimant's condition miraculously improved overnight, and claimant's GAF returned to what it was over the previous year, at 50, a GAF of 41-50 still indicates a serious impairment in social, occupational, or school functioning. Additionally, it is notable that claimant's

treating sources opined that claimant should have remained hospitalized for treatment of his depression. Therefore, considering the record as a whole, the Administrative Law Judge holds that claimant is markedly impaired in social functioning.

As claimant is markedly difficulty in social functioning and experienced repeated episodes of decompensation, each of extended duration, 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.

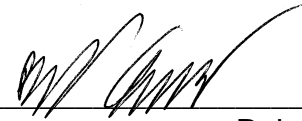
With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

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 program. Therefore, the decision to deny claimant's application for MA-P and Retro MA-P was incorrect.

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

The Department is ORDERED to process claimant's MA-P 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 August, 2011.



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

Date Signed: 08/03/10

Date Mailed: 08/04/10

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:

