

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: 2010782
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by by telephone conference on November 18, 2009 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on August 28, 2008. At the hearing, the Claimant was present and testified along with her friend, [REDACTED]. Rhonda Robinson, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for SDA and MA as of April 21, 2009. Retro benefits were requested to December, 2008.
2. Claimant is 5'6" tall and weighs 175-200 pounds.
3. Claimant is right handed.

4. Claimant is 42 years of age.
5. Claimant's impairments have been medically diagnosed as bipolar disorder, depressive disorder, boils, heel spur, and asthma.
6. Claimant's physical symptoms are pain in right foot, left ankle, boils over her body, deteriorating teeth, wrist pain, knee pain with stairs, decreased vision, numbness in feet and hands.
7. Claimant's mental symptoms are poor memory, confusion, crying spells (every week), anger, nervousness, panic attacks (close to every day – feels like she can't breathe, feels like pressure on her chest, hot & sweaty), disturbed sleep, self esteem, hallucinations (auditory and visual – daily), no suicidal thoughts, but does have homicidal thoughts.
8. Claimant lives in residential treatment facility. Claimant treats monthly with a psychiatrist, a psychologist twice weekly and attends group therapy sessions five days a week.
9. Claimant takes the following prescriptions:
 - a) Naprosyn
 - b) Paxil
 - c) Lamictal
 - d) Geodan
 - e) Seroquel
 - f) Benedryl
 - g) Albuteral inhaler (as needed) – insurance wd not cover for nebulizer
 - h) Nexium – reflux
 - i) Prilosec
 - j) Claritin
10. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
11. Claimant has a high school education and less than a year in college.
12. Claimant is able to read/write/perform basic math skills.
13. Claimant last worked in January of 2005 at [REDACTED] doing work as a cashier and cook. The job duties did not require lifting or bending/stooping, but Claimant was required to be on her feet all day.
14. Claimant has prior employment experience as a janitor (no lifting, 2 hours standing during the day and no bending/stooping – just to get trash out).
15. Claimant testified to the following physical limitations:
 - Sitting: 4-5 hours

- Standing: 30 min. (needs to sit b/c legs & knees hurt)
 - Walking: ½ block
 - Bend/stoop: can't get back up
 - Lifting: Claimant can lift a gallon of milk.
 - Grip/grasp: Claimant says stuff just falls out of hands.
16. Claimant performs household chores at the residential treatment center such a making buckets (putting detergent and water in buckets). Claimant is also able to make her bed and sweep.
17. The Department found that Claimant was not disabled and denied Claimant's application on 8/13/09.
18. Medical records examined are as follows:

██████ Independent Psychiatric Evaluation (Exhibit 3)

Pt complains of mood swings and has periods where she easily gets angry, argumentative, physically and verbally aggressive and has racing thoughts. During periods of depression, she has crying spells, low energy level, does not want to do anything, has increased appetite and weight, and also admitted to having suicidal thoughts and homicidal thoughts. She also indicated that she suffers from hallucinations and feeling paranoid.

CALCULATIONS: $13+9=23$, $100-7=92$. Despite counting on her fingers.

MEDICAL SOURCE STATEMENT: In regard to her sensorium and mental capacity she did have some problems with concentration and calculation. She sees a psychiatrist and a therapist and is being prescribed psychotropic medication.

DIAGNOSES: Bipolar disorder, GAF=50

PROGNOSIS: Guarded. She needs to continue treatment.

██████ Psychiatric/psychological Examination Report (Exhibit 5)

Depressive disorder NOS, GAF 45

██████ Medical Examination Report (Exhibit 4)

GENERAL EXAM: Patient experiencing withdrawal from long term cocaine use will require mood and energy adjustment reactions.

RESPIRATORY: Asthma attempting stabilization may need additional inhaler for control, needs pulmonary testing.

ABDOMINAL: Reflux disease

MUSCULOSKELETAL: X-rays pending of feet, toes, knees, lower back. Rt heel spur.

NEURO: Depletion chronic of brain neurotransmitter levels secondary to long term substance abuse history, reflexes altered, depressive disorder, flat affect and fluctuation of moods.

PHYSICAL LIMITATIONS: Lifting less than 10 lbs. occasionally, stand/walk less than 2 hrs in 8 hour day, sit less than 6 hours in 8 hour day, no reach, pushing/pulling, fine manipulating and no use of foot/leg controls.

Rt heel spur limits prolonged standing, ambulation limited, endurance level decreased, energy level, mood alterations withdrawal from long term cocaine use.

MENTAL LIMITATIONS: Limited in memory, sustained concentration, and social interaction. Pt has been diagnosed with depressive disorder & receiving mental health services.

██████████ Mental Residual Functional Capacity Assessment (Exhibit 6)

Markedly limited as follows:

1. The ability to understand and remember one or two step instructions.
2. The ability to carry out simple, one of two step instructions.
3. The ability to carry out detailed instructions.
4. The ability to make simple work related decisions.
5. The ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent basis without an unreasonable number and length of rest periods.
6. The ability to interact appropriately with the general public.
7. The ability to ask simple questions or request assistance.
8. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.
9. The ability to respond appropriately to change in the work setting.
10. The ability to set realistic goals or make plans independently of others.
- The patient is unable to remain consistent in her thought pattern. She has forgot the simplest task such as making copies, scheduling appointments and attending appointments.

██████████ Psychiatric Progress Notes (Exhibit 2, pp. 9-12)

She says she has episode of anger once in a while and likes to take double amount of Lamictal for relief of bipolar depression.

██████████ ER (Exhibit 2, pp 1-2)

Pt presents to ER with rhinorrhea, cough, congestion, cold and URI symptoms. Discharged with Benadryl, Sudafed and Guaifenesin

██████ Psychiatric Eval (Exhibit 2, pp. 3-8)

COMPLAINTS: Depressed, irritable, angry and easily agitated. Feels hopeless, helpless, worthless, isolates herself, crying a lot lately, poor concentration, decreased memory. Hx of crack and alcohol since early teen years. (used one month ago, up to \$500/day)

DX: Depressive disorder NOS, alcohol dependence, cocaine dependence.

PROGNOSIS: Good/fair with treatment

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months
. . . 20 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made

at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant last worked in January of 2005. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;

- (2) Capacities for seeing, hearing and speaking;
- (3) Understanding, carrying out, and remembering simple instructions.
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, Claimant has been medically diagnosed with bipolar disorder, depressive disorder, asthma and a heel spur. Claimant’s medical doctor has indicated physical and mental limitations and Claimant has been found to be markedly limited in a wide variety of mental residual functional capacity tests. As such, Claimant has medical impairments which significantly limits her physical and mental ability to perform basic work activities.

However, the medical records also establish long term alcohol and cocaine abuse. 20 CFR 416.935 requires a determination of whether drug addiction or alcoholism is a contributing factor material to the determination of disability through the factors of 20 CFR 416.935(a) through (2) (ii). The evaluation used is as follows:

- (1) Determine which physical and mental limitations would remain if Claimant stopped using drugs or alcohol.

- (2) If remaining limitations would not be disabling, drug addiction or alcoholism is a contributing factor material to a determination of disability.
- (3) If remaining limitations are disabling independent of drug addiction or alcoholism, substance abuse is not a contributing factor material to a determination of disability.

Claimant has a long history alcohol and crack addiction. However, at the time of the hearing Claimant was enrolled in a treatment center and had been, according to testimony and medical records, sober for eight (8) months. Despite the sobriety, Claimant continues to be diagnosed as bipolar with a reduced GAF score of 45-50. She was also found by the both her treating and independent psychiatrists to have problems with concentration and memory. Since Claimant's mental limitations remain disabling, the alcohol and cocaine addiction is not a contributing factor material to a determination of disability. Therefore, it is necessary to continue to evaluate the Claimant's impairments under step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record supports a finding that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 12.04 *Affective Disorders* was reviewed. 20 CFR 404 § 12.2 describes and Affective Disorder as follows:

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

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

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking,

OR

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

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

First, the record reveals that Claimant has mood swings with periods of racing thoughts as well as periods of depression including crying spells, low energy levels, increased appetite and weight gain, suicidal thoughts and hallucinations. Claimant, therefore, satisfies the requirements of A for Depressive Syndrome and Bipolar Syndrome.

Second, Claimant's Depressive Syndrome has affected her social functioning and concentration. The independent psychiatrist found that Claimant had some problems with

concentration and calculation. (Exhibit 3). Claimant's treating physician found the Claimant had mental limitations in memory, sustained concentration and social interaction. (Exhibit 4). A Mental Residual Function Capacity Assessment found Claimant markedly limited in understanding, remembering and carrying out even simple one or two step instructions and in her ability to be socially appropriate or interact with the general public. (Exhibit 6). Finally, two psychiatrists found Claimant's GAF score to be 45-50 which indicates serious symptoms or as serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job). Claimant therefore meets the requirements of B.

Accordingly, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

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

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of

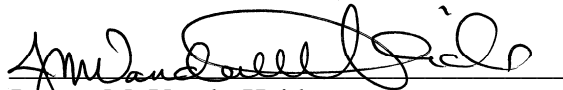
the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM/PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of April 21, 2009, including any retroactive benefits requested.

Therefore, the department is ORDERED to initiate a review of the application of April 21, 2009, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed March, 2010.


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

Date Signed: 03/10/10

Date Mailed: 03/15/10

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.

2010-782/JV

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