

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-33887
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 14, 2011
DHS County: Oakland (63-04)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, which govern the administrative hearing and appeal process, and Claimant's request for a hearing. After due notice, a telephone hearing was conducted on July 14, 2011, in Detroit, MI. Claimant appeared and testified at the hearing. [REDACTED]

[REDACTED], appeared and testified as Claimant's Authorized Hearing Representative. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant's disability meets the medical criteria for eligibility for Medical Assistance (MA or Medicaid) and MA-retroactive benefits?

FINDINGS OF FACT

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

1. On December 16, 2010, Claimant applied for MA and MA-retroactive benefits.
2. Claimant's impairments have been medically diagnosed as bipolar disorder or paranoid schizophrenia with borderline personality traits and occupational problems. DHS Exhibit 1, pp. 7B, 47. She was first diagnosed in [REDACTED].
3. Claimant's behavioral symptoms are: moderately limited ability to remember locations and work-like procedures, make simple work-related decisions and ask simple questions or request assistance. Claimant's additional behavioral

symptoms are: markedly limited ability to understand and remember detailed instructions, carry out detailed instructions, maintain attention and concentration for extended periods, perform activities within a schedule, maintain regular attendance, be punctual with customary tolerances, work in coordination with or proximity to others without being distracted by them, complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods, interact appropriately with the general public, accept instructions and respond appropriately to criticism from supervisors, get along with co-workers or peers without distracting them or exhibiting behavioral extremes, respond appropriately to change in the work setting, travel in unfamiliar places or use public transportation, and set realistic goals or make plans independently of others. *Id.*, pp. 7A-B.

4. Claimant is under the care of [REDACTED] and has been treating there since [REDACTED]. She receives supportive psychological therapy and psychiatric evaluation including prescriptions for Trazodone (depression), Geodon (bipolar disorder and schizophrenia) and Cogentin (prescribed to decrease the side-effects of Geodon).
5. Claimant's impairments have lasted for a continuous period of more than twelve months.
6. Claimant is 5'4" tall and weighs 175 lbs.
7. Claimant is forty-three years old. Her date of birth is [REDACTED].
8. Claimant has a high school diploma. She has no further education or training.
9. Claimant is able to read and write and can perform basic math skills.
10. Claimant worked as a waitress and dancer. She has not worked since the 1990s.
11. Claimant testified to the following physical limitations: kneeling; carpal tunnel syndrome which causes her to have hand cramps and limits her ability to perform such things as grocery shopping and also weeding work in the garden.
12. Claimant testified to the following mental impairments: she has "creepy things" in her head, and this condition improved while she was on medication; she also testified that she does not have any mental impairments and it is society that is afraid of her and cannot deal with her. She testified that since she stopped

taking all of her medications in March or April 2011, she “can keep people from messing with me.”

13. Claimant testified she has been on a series of prescription medications for her bipolar disorder, including Seroquel, Zoloft, Ativan, Abilify, Geodon, Cogentin and Trazodone.
14. Claimant is homeless. Currently she is staying with friends. She testified that her means of support is that she “lives off friends.”
15. Claimant performs limited household chores. She testified that she cannot perform housework because she drops things. She does not drive and has no driver’s license. She can cook for herself, but needs help with grocery shopping.
16. Claimant has one hobby, she does paper craft work for a short time at the beginning of the day.
17. Regarding her activities of daily living, Claimant testified she gets up, makes coffee, reads a biblical reader, “Daily Bread,” which she keeps by her bed, but she has “no real routine.” She tries to take a shower every three days.
18. Claimant testified that in [REDACTED], a doctor told her that she could not work. At that time she was receiving Supplemental Security Income (SSI) from the U.S. Social Security Administration. Her disability was bipolar disorder and schizophrenia. Also at that time she was convicted of two felonies and was incarcerated from [REDACTED].
19. On April 29, 2011, Claimant filed a Request for a Hearing with DHS.
20. On June 3, 2011, DHS determined Claimant was not disabled and denied her application for MA benefits.
21. Medical records examined are as follows:

[REDACTED]
Start date: [REDACTED]
Treating psychiatrist: [REDACTED] bimonthly.
Treating social worker: [REDACTED] weekly.
Client status: active. *Id.*, pp. 11-50.

22. Claimant's psychiatrist, [REDACTED], reports Claimant's history of mental illness and daily functioning in the Psychiatric/Psychological Examination Report, DHS Form 49-D, as follows:

Has history of mental illness, extreme paranoia, hallucinations, delusions, extreme symptoms of anxiety and depression. Unable to keep a job secondary to paranoia and extreme anxiety...3-4 psychiatric hospitalizations...She has difficulty with socializing or sustaining job. *Id.*, pp. 7A-B.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers MA pursuant to MCL 400.1 *et seq.* and MCL 400.105. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

Federal regulations require that DHS must use the same operative definition for "disabled" as used by the Federal government for SSI benefits 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 CFR 416.905.

In determining whether an individual is disabled, 20 CFR 416.920 requires the finder of fact to follow a sequential evaluation process by which current work activity, the severity of impairment(s), residual functional capacity, and vocational factors (age, education, and work experience) are assessed, in that order. A determination that an individual is disabled can be made at any step. If the fact finder finds disability at a particular step in the process, it is not necessary to continue the evaluation through subsequent steps.

1. Current Substantial Gainful Activity

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 Federal regulations, it is presumed that she or he has the

demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she or he is not disabled regardless of how severe the physical and mental impairments are and regardless of age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, Claimant has not been engaged in SGA for at least ten years. Therefore, I find that Claimant is not disqualified at the first step and I proceed to the second step of the MA analysis requirements.

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, coworkers 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 medical merit. The U.S. Sixth Circuit Court of Appeals, in *Salmi v Secretary of Health and Human Services*, 774 F2d 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 F2d 860, 862 (6th Cir. 1988); *Farris v Sec’y. of Health & Human Servs.*, 773 F2d 85, 90 (6th Cir. 1985).

In this case, Claimant gave credible and un rebutted testimony that she has had bipolar disorder for at least sixteen years. Claimant’s treatment records present credible and un rebutted testimony that she has been treating for bipolar disorder for two years. Her numerous prescriptions attest to the fact that she is under the care of a psychiatrist. She is also in psychotherapy with a social worker and receives medical care from physical medicine specialists. Her psychiatrist states that she is unable to work, she

has moderately limited ability in three behavior areas related to working, and markedly limited ability to perform in fourteen areas related to working.

Claimant gave credible and un rebutted testimony that at the present time, she cannot shop for groceries although she can cook for herself. She testified that she drops things and has difficulty kneeling, due to carpal tunnel syndrome and prior knee surgery.

Based upon the findings of fact and conclusions of law above, I find and conclude that Claimant's testimony, her medical and social history, and her treating psychiatrist's evaluation of her employability establish that Claimant has mental impairments that have more than a minimal effect on basic work activities, and Claimant's mental impairments have lasted for more than twelve months.

3. Listed Impairment

After reviewing the criteria of CFR Title 20, Part 404, Subpart P, Appendix 1: Listing of Impairments, Listing 12.04, *Affective Disorders*, the undersigned finds that Claimant's medical records substantiate that Claimant's medical impairments meet or are medically equivalent to the listed requirements. 20 CFR 404 §12.04 describes affective disorders as follows:

Sec. 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, or when the requirements in C are satisfied.

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

...

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.

20 CFR 404, Sub-part P, Appendix 1, Sec. 12.04, *Affective Disorders*, pp. 93- 95.

In this case, Claimant's current treating physician diagnosed her with bipolar disorder in [REDACTED], and Claimant testified she was hospitalized three or four times for bipolar disorder. Accordingly, I find and determine that the requirements of Part 3 of Section A have been met by Claimant in this case.

The requirement of Section B above is that there must be at least two of the four listed behaviors present. I find that [REDACTED] findings of seventeen moderately or markedly limited functional capacities and the doctor's overall assessment that Claimant is unable to work due to paranoia and extreme anxiety fulfill the requirement of Section B. Also, Claimant testified that she lives off friends, she has no home, her things are at her father's home, she does not drive, and she has no occupational skills. In addition, she does not and, it appears, cannot, function more than in a minimal fashion to take care of herself. She has no activities, hobbies, social life, or other daily concerns. All of this testimony and evidence taken as a whole persuade me that Claimant meets the requirements of Section B.

I have considered all of the testimony and evidence in this case as a whole in reaching my decision. I find and determine that Claimant's medical history and her testimony are consistent with the medical treatment she reports, and I accept her testimony.

I note at this point that there are no records of medical treatment in the record, other than the report of Claimant's therapist. I took this into consideration in making my decision, as required by 20 CFR 404, Subpart P, Appendix 1, Section 1.00H, Documentation-When there is no record of ongoing treatment:

Some individuals will not have received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment(s). In such cases, evaluation will be made on the basis of the current objective medical evidence and other available evidence, taking into consideration the individual's medical history, symptoms, and medical source opinions. Even though an individual who does not receive treatment may not be able to show an impairment that meets the criteria of one of the musculoskeletal listings, the individual may have an impairment(s) equivalent in severity to one of the listed impairments or be disabled based on consideration of his or her residual functional capacity (RFC) and age, education and work experience. 20 CFR 404, Subpart P, Appendix 1, Sec. 1.00H.

Considering all of the above and including Claimant's age, education and work experience, the undersigned finds the medical reports, Claimant's history and her testimony substantiate that Claimant's mental impairments meet or are medically equivalent to the listing requirements of 12.04-Affective Disorders. In this case, this Administrative Law Judge finds Claimant is presently disabled at the third step for purposes of the MA program. As Claimant is disabled from work by her treating physician, there is no need to evaluate Claimant with regard to the fourth or fifth steps.

In conclusion, based on the findings of fact and conclusions of law above, I find and determine that a preponderance of the evidence supports the finding that Claimant's impairment disables her under Federal SSI disability standards. This Administrative Law Judge finds Claimant is disabled for purposes of the MA program. I find and conclude that the Department is hereby REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES the DHS' SHRT decision of June 3, 2011. I find and decide that Claimant is medically disabled from all work as of September 1, 2010, and is therefore medically eligible for MA benefits. I further find and determine that Claimant is also automatically eligible for SDA benefits if she should make an application for such benefits.

IT IS HEREBY ORDERED that DHS shall:

1. Initiate a review of Claimant's December 16, 2010, application, if not done previously, to determine Claimant's nonmedical eligibility for MA;
2. Inform Claimant of its determination in writing;
3. Provide Claimant with appropriate retroactive supplemental benefits in order to restore her to the benefit level to which she is entitled;
4. Review this case in September 2012.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 11, 2011

2011-33887/JL

Date Mailed: August 11, 2011

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.

JL/pf

cc:

