

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

IN THE MATTER OF:



Reg. No: 2011-38112
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date:
September 1, 2011
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 September 1, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA 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 November 29, 2010, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On May 12, 2011, the Medical Review Team (MRT) denied Claimant's application for SDA stating that Claimant's physical impairment will not prevent employment for 90 days or more. MRT denied Claimant's MA application stating Claimant is capable of performing other work, pursuant to 20 CFR 416.920(f). (Department Exhibit A, pages 1-2).
- (3) On May 19, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On June 6, 2011, Claimant filed a request for a hearing to contest the department's negative action.

- (5) On July 12, 2011, the State Hearing Review Team (SHRT) again denied Claimant's application stating Claimant retains the residual functional capacity to perform a wide range of simple and repetitive work. (Exhibit B, pages 1-2).
- (6) Claimant has a history of bipolar disorder, depression, closed head injury, intermittent vertical diplopia and rheumatoid arthritis.
- (7) On January 18, 2010, Claimant saw her doctor. She was not suicidal and had an appointment with Community Mental Health (CMH) the following week. She was diagnosed with bipolar disorder and depression. She was prescribed Zantax, Elavil, and Klonopin and instructed to keep her appointment at CMH. (Department Exhibit A, pages 10-11).
- (8) On October 6, 2010, Claimant saw her doctor complaining of being unable to sleep, swollen hands most of the time and bad headaches. The doctor noted Claimant had been beaten up two years ago, resulting in headaches and a right orbital fracture. She has been diagnosed as bipolar since a teenager. Based on Claimant's closed head injury and bipolar disorder, she was prescribed Elavil, Depakote and Klonopin in addition to other medications. (Department Exhibit A, pages 15-16).
- (9) On October 7, 2010, Claimant's lab results showed she had a Vitamin D deficiency, was positive for Rheumatoid Arthritis factor, had high glucose and high CO2 and a low GFR of 83, suggesting there may be some kidney damage. Her high hsCRP of .634, normal is .3, indicates she meets the FDA guidelines for evaluation of coronary disease. (Department Exhibit A, pages 17-23).
- (10) On October 29, 2010, Claimant was evaluated at the Flint Neurological Centre for double vision. Claimant was assaulted two years ago and sustained a fracture of the right orbit and nose. She started to have double vision two months ago and it seems to occur with certain eye movement, probably looking to the right. She feels that her right eye gets stuck and then she will see double, but it does not disappear when she covers either eye. It seems to be vertical and lasts up to 20 minutes associated with a severe, diffuse headache. She has had this phenomenon four times so far. She does have a history of bipolar disorder and anxiety. She takes Klonopin and 2 more psychotropic medications. Claimant was assessed with intermittent vertical diplopia that persists even when covering one eye, highly suggestive of functional manifestation. Alternatively, it could represent cerebral diplopia as part of a

migraine aura. She had pain, stiffness and weakness in the extremities with paresthesia. (Department Exhibit A, pages 24-27).

- (11) On January 11, 2011, Claimant's doctor completed the Medical Needs form noting Claimant has a bipolar disorder and a closed head injury. The doctor indicated he sees Claimant twice a month since October 6, 2010, and that she will require lifetime treatment. He also wrote that she will be unable to work at her usual occupation or any other job indefinitely and her condition is deteriorating. (Department Exhibit A, pages 56-59).
- (12) On February 1, 2011, Claimant was seen for refills of medication and numbness in her fingers. Claimant has bipolar disorder and numbness in her left hand. She was prescribed Seroquel XR and Elavil. (Department Exhibit A, pages 8-9).
- (13) On March 16, 2011, Claimant was examined by a licensed psychologist. Claimant was perceptually oriented and presented her ideas in a logical and coherent fashion. Demonstrated affect was depressed with episodic tearfulness. Claimant reported chronic depression secondary to history of physical and emotional abuse. She experienced suicidal feelings 3 to 5 years ago, but denied any history of attempt. She has undergone 3 psychiatric hospitalizations with diagnoses of bipolar disorder. She first underwent psychiatric hospitalization at McLaren at age 25 with 2 subsequent hospitalizations most recently 7 or 8 years ago. She has been consistently diagnosed with bipolar disorder. She has been seen as a psychiatric outpatient at New Passages for the past month with current medications Klonopin, Elvail and Depakote. She was unconscious for a time following an assault a couple of years ago, during which her eye socket and nose were fractured. She was hospitalized for 5 days and continues to experience double vision. She has been diagnosed with rheumatoid arthritis for which she takes Naproxen and Flexeril. She has smoked since age 15 and currently smokes a pack per day. Her heaviest use is her current use. Current diagnostic impression is Axis I: Bipolar disorder (by history) with chronic depression; Axis II: History of alcohol and prescription drug abuse; Axis III: History of closed head injury secondary to assault, rheumatoid arthritis, menstrual cramps; Axis IV: 4; Axis V: 48. The doctor noted that Claimant would need assistance in managing any benefits due to her history of alcohol and drug abuse. He also recommended that she continue to be involved in outpatient psychiatric treatment designed to reduce psychiatric symptoms, stabilize daily functioning, and address substance abuse issues. Ongoing use of psychotropic medication

will be an essential component of this treatment. (Department Exhibit A, pages 3-5).

- (14) On May 13, 2011, Claimant was examined by a psychologist for the Disability Determination Service. Claimant reported that she has Post Traumatic Stress Disorder from being assaulted by two men who beat her with a pistol and fractured her face and broke her nose four years ago. Claimant stated that she is afraid to go outside, hates big crowds and is always looking behind her. Claimant has gained 50 pounds in the last 6 months and cannot sleep at night, averaging 2-3 hours at night and 4-6 hours during the day. Claimant began receiving mental health treatment 3-4 months ago at New Passages and she began taking psychotropic medication in the winter of 2010. She reported in-patient and out-patient stays. She reports she leaves the house only for doctor appointments. She has tried to grocery shop twice in the past six months, but becomes anxious and leaves. She presented with an intact reality and lowered self-esteem. Rapport was easily established. She was cooperative and did become teary several times during the evaluation. She did not appear to exaggerate or minimize her symptoms. She had fair insight into her difficulty. Claimant reports hearing voices in the past telling her not to harm herself. Currently she denies hallucinations and delusions. She reports no past suicide attempts but reports a history of suicide ideation, most recently a year ago. She does report continued nightmares about the past assault a couple times a week and daily feelings of worthlessness. Her affect was appropriate. Her mood was depressed. She reports feeling depressed 5 days out of the week. She states that when she is in public, she feels restless, anxious and loud sounds cause her to become scared. Claimant was oriented to self, time and place. Prognosis: Fair if Claimant were to receive weekly consistent psychological care. At this time it appears she is able to understand and remember multistep tasks. However, due to her intense fear and anxiety when in public places, she will probably become easily distracted and complete them at a moderately decreased pace. Socially, she will probably be more withdrawn and anxious in her interactions with others. Diagnosis: Axis I: Major depressive disorder, recurrent moderate, Post Traumatic Stress Disorder; Axis III: Rheumatoid Arthritis; Axis IV: Unemployment; Axis V: GAF 40. (Department Exhibit A, pages 96-99).
- (15) Claimant is a 45 year old woman whose birthday is [REDACTED]. Claimant is 5'11" tall and weighs 213 lbs. Claimant is a high school graduate and has taken a college class.

- (16) Claimant was denied Social Security disability benefits and is appealing that determination.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 Reference Tables 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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables 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

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

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).

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).

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- #16 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes.

Claimant has shown, by clear and convincing documentary evidence and credible testimony, her mental impairments meet or equal Listing 12.04:

12.04 *Affective disorders* (e.g., 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). With:

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Depressive syndrome characterized by loss of interest in almost all activities, appetite disturbance with change in weight, sleep disturbance, decreased energy, feelings of guilty or worthlessness and difficulty concentrating or thinking and
 - 2. 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:
 - 1. Marked difficulties in maintaining social functioning;
 - 2. Marked difficulties in maintaining concentration, persistence or pace.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in deciding at application claimant was not disabled for potential MA, Retro-MA and SDA eligibility purposes.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and processing to determine whether claimant met all of the other financial and non-financial eligibility factors necessary to qualify for assistance under her November 29, 2010 MA, Retro-MA and SDA application. It is SO ORDERED.

