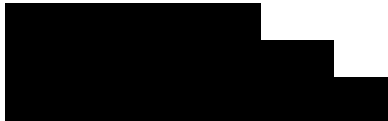


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201110947
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
April 28, 2011
Macomb County DHS (12)

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 April 28, 2011.

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 retroactive MA-P on May 20, 2010.
- (2) Claimant is 39 years old.
- (3) Claimant has a high school education.
- (4) Claimant is not currently working.

- (5) Medical records show a diagnosis of bipolar disorder and antisocial personality disorder.
- (6) Medical records show that claimant has a history of legal problems, drug abuse, authority issues, personality issues, social isolation, uncooperativeness, paranoia, anhedonia, distractibility, sleep disturbances, and anger problems.
- (7) Claimant received a GAF of 29 in an independent examination.
- (8) Third-party testimony confirmed that claimant had memory problems, rarely leaves the house, and can't be left alone for fear of relapse into the issues that have given claimant legal problems in the past.
- (9) Claimant is unable to manage his own funds or participate in normal activities of daily living.
- (10) On August 25, 2010, the Medical Review Team denied MA-P, stating that claimant was capable of performing other work.
- (11) On November 29, 2010, claimant filed for hearing.
- (12) On January 10, 2011, the State Hearing Review Team denied MA-P, and retroactive MA-P, stating that claimant did not have a severe impairment.
- (13) On April 28, 2011, a hearing was held before the Administrative Law Judge at the Department of Human Services office in Macomb County, Michigan, Mt. Clemens District.
- (14) Claimant was represented by [REDACTED]
[REDACTED].

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 2010 is \$1,640. For non-blind individuals, the monthly SGA amount for 2010 is \$1000.

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 medical evidence of antisocial personality disorder that has rendered him unable to interact appropriately with coworkers and the public or maintain employment according to the great weight of the evidence by both the Department and claimant’s treating sources. Claimant has a history of legal troubles, authority issues, social isolation and disruptiveness that would inhibit his ability to perform work activities. Claimant’s medical records show that claimant has had this condition for several years. The Administrative Law Judge finds that this is a significant impairment to claimant’s performance of basic physical work activities, and is therefore enough to pass step two of the sequential evaluation process.

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.

After considering the listings contained in Section 12.00 (Mental Impairments), the Administrative Law Judge finds that the claimant’s medical records contain medical evidence of an impairment that meets or equals a listed impairment.

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.

12.08 Personality disorders: A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

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

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

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. A careful examination of claimant's medical records, supplied from a treating source, 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 antisocial personality disorder. Claimant's records show an individual with deeply ingrained maladaptive patterns of behavior. Claimant has had several legal run-ins, little remorse, and drug abuse problems. Claimant is aggressive towards others, hostile towards authority figures, has paranoia issues, is socially isolated and shows a long pattern of maladaptive behaviors. Antisocial personality disorder has been confirmed by psychiatric records. Therefore, the undersigned holds that claimant meets or equals the listings found in the A criteria.

Claimant has marked difficulties in maintaining social functioning. *Social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR 404 App 1, Sub P, 12.00 (C)(2). Claimant is extremely socially isolative. Claimant's mother estimates that he leaves the house rarely. Claimant has few friends, and does not socialize. When claimant does socialize, the socialization is of a type that reinforces his maladaptive patterns. Claimant's is unable to stay out of trouble with the law, and his psychological records lead one to suspect that the personality disorder is the prime cause of this conflict. Finally, claimant's very disorder is of the type that gives one a marked difficulty in maintaining social functioning, by definition. The medical record confirms this

isolation. The undersigned therefore finds claimant to be markedly restricted in the area of social functioning.

Activities of daily living include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office. The quality of these activities is assessed by their independence, appropriateness, effectiveness, and sustainability. The undersigned must determine the extent to which the claimant is capable of initiating and participating in activities independent of supervision or direction.

The term "marked" 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. For example, if a claimant does a wide range of activities of daily living, the Administrative Law Judge may still find that a claimant has a marked limitation in daily activities if a claimant has 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 404 App 1, Sub P, 12.00 (C)(1).

Claimant has attitude problems that directly affect his ability to perform activities of daily living. Claimant's mother testified credibly that claimant is easily distracted, and unable to remain on task. Claimant does not do chores around the house without direct supervision, and often rebels against that supervision. Claimant has been violent in the past towards supervision. Claimant is unable to manage his own funds. Claimant is unable to complete activities of daily living without undue interruptions or distractions. This testimony is confirmed by the record. Furthermore, claimant was given a GAF of

29, which is consistent with all reported symptoms, and especially with a person who has marked impairments in performing activities of daily living.

Therefore, when combining claimant's psychiatric record, including claimant's GAF scores, and witness testimony, the Administrative Law Judge is able to hold that claimant is markedly impaired in activities of daily living.

As claimant is markedly impaired in social functioning and activities of daily living, 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 decisions to deny claimant's application for MA-P were incorrect.

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

1. The Department is ORDERED to process claimant's MA-P application and award required benefits, provided claimant meets all non-medical standards as well.
2. The Department is further ORDERED to initiate a review of claimant's disability case in July, 2012.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 07/06/11

Date Mailed: 07/07/11

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:

