

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

IN THE MATTER OF:



Reg. No.: 201153964
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: February 7, 2012
County: Kent 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 February 7, 2012. Claimant, represented by her guardian who was also her mother, personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On April 24, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) 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 July 20, 2011, Claimant filed an application for MA and SDA benefits alleging disability.
2. On August 19, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and SDA indicating that Claimant's non-exertional impairment will not prevent Claimant from performing other work.
3. On September 6, 2011, the department sent notice to Claimant that her application for Medicaid and SDA had been denied.

4. On September 15, 2011, Claimant filed a request for a hearing to contest the department's negative action.
5. On November 14, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and SDA benefits indicating Claimant retains the capacity to perform a wide range of simple and repetitive work. (Department Exhibit B, pages 1-2).
6. Claimant has a history of a bipolar disorder, manic depression, learning disability and short-term memory problems.
7. On September 26, 2011, Claimant was involuntarily admitted to [REDACTED] via petition and certification because of problems with significantly impaired daily living skills, (grooming, eating, consistently adhering to medications, making realistic plans for herself, getting out of bed, etc.), secondary to problems with mental illness. At admission her GAF was 15. Claimant was then discharged to the partial hospitalization program on October 11, 2011, and eventually returned to inpatient hospitalization on October 19, 2011, due to treatment non-adherence and impaired self-care abilities. She ultimately restabilized and discharged from inpatient hospitalization on October 27, 2011, with plans for outpatient follow-up. Claimant was also treated with medications while hospitalized: Wellbutrin was used to treat symptoms of depression, irritability, moodiness, and problems with attention/concentration. Depakote was given to treat mood swings and irritability. Ativan was used to treat anxiety. Nadolol was given to treat shakiness. Zyprexa Zydis was used to treat mood disorder symptoms. Claimant showed improvement while in the program and was discharged in improved condition to her parent's home where she will temporarily reside until she can get into the Dwelling Place. Discharge Diagnosis: Axis I: Bipolar I Disorder, Nicotine Dependence; Axis IV: Problems with primary support group; Axis V: GAF=40. (Department Exhibit A, pp 3-22, 244-285).
8. On February 6, 2012, Claimant's psychiatrist submitted a written letter indicating that he had been treating Claimant for Bipolar Disorder since 1993 and he did not believe that she could maintain employment of any significance as she decompensates under stress. Her psychiatrist opined that Claimant is unable to engage in any substantial activity of this kind and her condition has existed for several years and is expected to continue indefinitely. Her current GAF is 40 and she has been at this level for several years. (Claimant Exhibit A, p 1).
9. On February 15, 2012, Claimant underwent a psychiatric examination. Claimant has a long history of mood disorder and ADHD. Claimant is unable to be consistent. She has periods of severe depression, with periods of insomnia. The Mental Residual Functional Capacity Assessment revealed that under Understanding and Memory Claimant was markedly limited in her ability to understand and remember detailed instructions. Under Sustained Concentration and Persistence, Claimant

was markedly limited in her ability to carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a scheduled work period, maintain regular attendance, and to be punctual with customary tolerances; to work in coordination with or proximity to others without being distracted by them; and to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Under Adaptation, Claimant was markedly limited in her ability to respond appropriately to change in the work setting. Diagnoses: Axis I: Bipolar Disorder, ADHD; Axis V: Current GAF=45, last year GAF=50. The examining psychiatrist noted Claimant is unable to manage her benefit funds. (Department Exhibit A, pp 289-293).

10. On March 22, 2012, Claimant underwent a psychological evaluation by the Disability Determination Service. Claimant's thought processes were logical and organized and her speech was clear and understandable. Her memory and concentration were rather poor. She has panic attacks usually three times a month where she cannot breathe and her chest feels caved in and it gets a tingling sensation. She feels dizzy and gets sweaty. She says it is usually triggered by stress or arguments, and she notes that she does not like crowds. Somatic concerns include regular headaches lately, more so if she does not take her medicine. She says if she gets upset, she gets nausea and stomach discomfort, and she has back pain as well. Claimant's affect seemed a little blunted, but no acute distress. The prognosis for Claimant is fair to remain stable. She has had very longstanding issues with mood and has struggled over time to manage it effectively. She does engage in medications and other treatment but continues to have ups and downs as well as panic attacks. She is trying now to live independently for the first time ever and is struggling some with isolation. The examining psychologist opined that he believed Claimant has sufficient intellectual and physical skills and abilities to be employed, but her issues will be in sustainability of that employment over a period of time without her symptoms becoming a significant contributor to difficulty managing, controlling her anxiety and staying focused on the job. The examining psychologist also found that Claimant is unable to manage her benefit funds. Diagnosis: Axis I: Bipolar Disorder-currently depressed; Axis V: GAF=50. (Department Exhibit C, pp 4-9).
11. Claimant is a 29 year-old woman whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 115 lbs. Claimant completed high school.
12. Claimant had applied for Social Security disability benefits at the time of the hearing.

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 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 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 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 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 #6-#11 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, that his mental impairments meet or equal Listing 12.04(C):

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:

- 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
2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. 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;

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of her July 20, 2011, MA/Retro-MA and SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA/Retro-MA and SDA eligibility purposes.

Accordingly, the department's decision is **REVERSED**, and it is Ordered that:

1. The department shall process Claimant's July 20, 2011, MA/Retro-MA and SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in May 2014, unless her Social Security Administration disability status is approved by that time.
3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 14, 2012

Date Mailed: May 15, 2012

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.

VLA/cr

cc:

