

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-55107
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: August 15, 2012
County: Berrien

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on August 15, 2012, from Lansing, Michigan. Claimant, his mother and mental health nurse, personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Assistant Payments Supervisor [REDACTED] [REDACTED] and Assistant Payment Worker [REDACTED] [REDACTED]

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 September 19, 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), Retro-MA and State Disability Assistance (SDA) benefits?

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 January 30, 2012, Claimant filed an application for MA/Retro-MA and SDA benefits alleging disability.
- (2) On May 3, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that Claimant was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration.
- (3) On May 4, 2012, the department sent notice to Claimant that his application for Medicaid had been denied.
- (4) On May 16, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On June 8, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating that Claimant retains the capacity to perform unskilled work. SDA was denied because the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days. (Department Exhibit B, pp 1-2).
- (6) On September 19, 2012, the SHRT reviewed the newly submitted evidence and upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the capacity to perform simple and repetitive tasks. (Department Exhibit C, pp 1-2).
- (7) Claimant has a history of diabetes mellitus type 1, attention deficit hyperactivity disorder (ADHD), bipolar disorder, mood disorder, personality disorder, Asperger's syndrome and substance abuse.
- (8) On April 21, 2011, Claimant met with his psychiatrist. His psychiatrist noted that after Claimant's overdose, he was recently hospitalized for a day and released as it was felt he did not meet criteria for commitment. He is a juvenile diabetic and has been for many years. He was diagnosed as having attention deficit hyperactivity disorder in the 8th grade and at that time was placed on Ritalin and then Concerta, and now he is on Focalin. Without his stimulant, he is very irritable and his behavior is much worse. His mother was wondering if he had a developmental disorder. He has reading problems. He has dyslexia. He has had problems with bulimia in the past. He stated he cut himself to see if it would make him feel better but it did not. The psychiatrist noted he has some very unusual behaviors. His IQ was tested at school and was borderline to low normal. (Department Exhibit 9).
- (9) On January 11, 2012, Claimant was referred to mental health services by his mother over her concerns about Claimant's inability to adequately manage his diabetes as well as other social deficits including chronic lying and need for approval. He has been receiving services from Riverwood ACT in order to assist in the management of his diabetes and improve independent living skills. He is currently living in a residential setting for

disabled persons. He has had historic problems in appropriately managing his diabetic condition as well as issues with chronic lying, excessive interest in pleasing others, difficulties in establishing and maintaining appropriate social relationships and substance abuse. He is also reported to have received special education services while in school. Claimant's psychiatrist opined that based upon observation, interview, clinical records review and testing data there seemed to be fairly good support for a diagnosis of Asperger's Disorder. This diagnosis seems to be consistent with Claimant's functioning level as it relates to inadequate social interaction skills. He also has some significant deficits which interfere with his ability to function adaptively. He recognizes he has difficulty fitting in with peers and others due to his difficulties and in order to compensate for these deficits, he tends to utilize maladaptive strategies in order to achieve his social needs. These strategies include lying to people in an attempt to engage them or pique their interest in relating to him. His difficulty in managing his diabetes is likely a maladaptive attempt to deny his illness and be "normal" and fit in with others. Due to his relatively lower functioning abilities, the prognosis is guarded in terms of his capacity to function independently and adaptively in social/interpersonal and occupational domains. (Claimant Exhibit 10).

- (10) On February 27, 2012, Claimant was admitted to the hospital for diabetic ketoacidosis. He was treated with IV fluids, IV insulin with transition to oral fluids and subcutaneous insulin. He did very well. It was suspected that this episode was the result of noncompliance with the dose of his long-acting insulin. Claimant was discharged on February 28, 2012 on his prior program of long-acting and short-acting insulin. (Department Exhibit D, pp 1-54).
- (11) On March 18, 2012, Claimant was admitted to the hospital for diabetic ketoacidosis. He complained of abdominal pain, acid reflux and vomiting. The onset was sudden and the symptoms had been worsening. He had run out of Lantus and did not have insurance to get it filled. Claimant was instructed to see his primary care physician for medication assistance programs. He was discharged on March 19, 2012. (Department Exhibit D, pp 55-80).
- (12) On March 28, 2012, Claimant underwent a medical examination by his treating physician on behalf of the department. Claimant was diagnosed with uncontrolled diabetes type 1, ADHD and Asperger's Syndrome. His blood sugars were highly variable, he had poor focus and attention and an inability to manage his medical issues on his own. He had a depressed mood, slow speech, flat affect, and a decreased inability to follow directions. The examining physician opined that Claimant's condition was deteriorating. (Claimant Exhibits 7-8).

- (13) On April 9, 2012, Claimant was admitted to the hospital for diabetic ketoacidosis. He presented after having been off his long-acting insulin because his Medicaid coverage expired when he turned 21 years of age. He has been trying to treat himself with regular insulin every 4 hours subcutaneously without success. He was treated with fluids and insulin replacement therapy. He did very well. It was suspected that this episode was the result of noncompliance with the dose of his long-acting insulin. Claimant was discharged home on April 10, 2012 on 42 units daily with Lantus and sliding scale insulin. (Department Exhibit D, pp 81-125).
- (14) On April 20, 2012, Claimant's social worker, who meets with Claimant three times a week, completed a Mental Impairment Questionnaire on Claimant. Current diagnosis, Axis I: Asperger's Syndrome with behavior issues; Axis II: Personality disorder; Axis III: Diabetes Mellitus type 1; Axis IV: Economic issues, psychosocial stressors; Axis V: Current GAF=45. Claimant's symptoms were sleep disturbance, decreased energy, feelings of guilt or worthlessness, difficulty concentrating or thinking, inflated self-esteem, decreased need for sleep, easy distractibility and involvement in activities that have a high probability of painful consequences which are not recognized. Claimant displayed significant deficits which interfere with his ability to function adaptively in social/interpersonal and occupational settings. These behaviors and symptoms are supported by his current diagnoses of Asperger's Syndrome with behavioral issues and personality disorder. Prognosis was guarded due to continued choice to maintain and continue current behaviors. Claimant had marked limitations in his ability to remember work-like procedures, maintain attention for a 2-hour segment, maintain regular attendance and be punctual within customary usually strict tolerances, sustain an ordinary routine without special supervision, work in coordination with or proximity to others without being unduly distracted, make simple work-related decisions, complete a normal workday without interruptions from psychologically based symptoms, perform at a consistent pace without an unreasonable number and length of rest periods, accept instructions and respond appropriately to criticism from supervisors, get along with co-workers or peers without unduly distracting them or exhibiting behavioral extremes and respond appropriately to changes in a routine work setting, be aware of normal hazards and take appropriate precautions. (Claimant Exhibits 1-6).
- (15) On June 17, 2012, Claimant was admitted to the hospital in critical condition for dehydration, diabetic ketoacidosis and leukocytosis. He was treated with liberal IV hydration, IV insulin drip, frequent glucochecks and labs checked. His symptoms improved. Claimant was discharged on June 19, 2012 and advised to continue checking his blood sugar frequently at home and continue the sliding scale. (Department Exhibit D, pp 1-54).

- (16) On July 31, 2012, Claimant was admitted to the hospital with pancreatitis. He did not have any overt signs of diabetic ketoacidosis at admission. His mother stated that his blood sugars were in the high 300s prior to arrival and she gave him Lantus. He received IV hydration, analgesia, acetaminophen, Morphine and fentanyl insulin with regular and Lantus therapies. The ultrasound of his abdomen revealed no gallstones. Claimant was discharged on August 4, 2012 with a diagnosis of Pancreatitis, Hyperlipidemia and Diabetes Mellitus, Type 1. (Department Exhibit D, pp 199-254).
- (17) Claimant is a 21 year old man whose birthday is [REDACTED]. Claimant is 5'7" tall and weighs 138 lbs. Claimant has a high school equivalent education and last worked in July, 2010 installing floor covering.
- (18) Claimant was appealing the denial of 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 #7-#17 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 12.08:

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.

Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his January 30, 2012, 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 January 30, 2012, MA/Retro-MA and SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The department shall review Claimant's medical condition for improvement in October, 2014, unless his 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 his 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: October 10, 2012

Date Mailed: October 11, 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.

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