

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2007-11353
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 27, 2007
Lake County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 June 27, 2007 in Baldwin. Claimant personally appeared and testified under oath.

The department was represented by Kathy Groff (FIM).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence prior to the record closed date.

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work on a sustained basis for one year (MA-P) or 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work on a sustained basis for one year (MA-P) or 90 days (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) Claimant is a MA-P/SDA applicant (February 5, 2007) who was denied by SHRT (May 30, 2007) due to claimant's ability to perform light work. SHRT cited Med-Voc Rule 202.17 as a guide.

(2) Claimant's vocational factors are: age—39; education—10th grade; post high school education—none; works experience—janitor and inspector at sawmill.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since November 2005 when she worked as a janitor.

(4) Claimant has the following unable-to-work complaints:

- (a) Bipolar disorder;
- (b) Anxiety disorder;
- (c) Dystymic disorder;

(5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE

Claimant has multiple medical problems including chronic back pain, severe exogenous obesity, allergic rhinitis, gastroesophageal reflex disease, asthma, both exertional and allergy triggered. She also has a long history of Bipolar disorder with significant mood swings and depression. The doctor indicated she had diminished breath sounds on 1/24/2007 with prolongation of expiratory phase of respiration. She has a history of suicidal thoughts and is on anti depressant medication. He felt she was physically and emotionally unstable and not a candidate for even sedentary employment, due to her emotional instability (Page 13). On 1/24/2007, claimant was 5'4" and 243 pounds. Her blood pressure was 116/60 (Page 18).

On 1/15/2007, claimant had tendonitis and her Bipolar disorder was noted to be stable at the time (Page 19).

The mental status exam, dated 1/4/2007 showed claimant's overall motor activity was somewhat lethargic. She seemed very dependent on other people. Her motivational for change was somewhat marginal. She was very verbal although that appeared to be associated with the presence of anxiety. None the less, she tended to use language reasonable well to express herself. However, at times, her thoughts did not appear to be very well organized. Her overall affect appeared to be very labile, although she also appeared to be very anxious as very depressed as well. Her diagnosis was generalized anxiety disorder and dysthymic disorder (new information).

ANALYSIS: Claimant is obese and was 243 pounds in 1/2007. She had a history of back pain, but no objective abnormal findings noted recently. She was anxious and depressed, but is only treated for this by her treating physician. She was not receiving any treatment from a mental health professional. Claimant would be limited to simple, unskilled, light work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing; bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant lives with the 17 year-old daughter of her boyfriend.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] office note from [REDACTED], MD was reviewed. It states in pertinent part:

This is a 39 year-old white female, this 39 year-old female has multiple medical problems including chronic back pain, severe exogenous obesity, with a BMI of 42, allergic rhinitis, gastroesophageal reflux disease, asthma, both exertional and allergy triggered. The patient has a long history of an unstable bipolar disorder with significant mood swings and depression.

She, in my opinion, remains physically and emotionally unstable and is not a candidate for even sedentary employment due to her emotional instability. This condition runs very strongly on both sides of her family, both in her mother and father and the patient's prognosis is guarded.

- (b) A January 4, 2007 DDS mental status evaluation was reviewed.

The Ed.D psychologist provided the following history: This 39 year-old female was seen for a mental status examination on January 4, 2007. This individual reports that she suffers from depression as well as that of anxiety. This client adds that she may also suffer from a Bipolar disorder secondary to her family history in such regard. Medically, this client reports the presence of COPD as well as asthma. Furthermore, this client also reports that she has a bone spur on her right shoulder.

The psychologist provided the following additional information:

Physically, this client presents herself in a reasonable adequate manner for her age and sex, although she is generally overweight. In general, this is a very verbal individual although this appears to be associated with the presence of anxiety. Nevertheless, this client tends to use language reasonably well to express herself, such that she appears to possess potentially adequate intelligence. However, she is also very anxious as well as a rather depressed individual, although such depression has, most likely, been present for a relatively long time, but also in the nature of a psychoneurotic disorder.

The psychologist provided the following diagnosis:
Axis I—Generalized anxiety disorder and dysthymic disorder. Axis V/GAF—50.

- (9) The probative medical evidence, standing alone, does not establish an acute mental condition that is expected to prevent claimant from performing customary work functions for the required period of time. The psychologist provided the following diagnosis: Generalized

Anxiety disorder and Dysthymic disorder. The GAF score was 50. The psychologist report, when taken in conjunction with the medical evidence of record, does not establish a severe mental impairment that would totally preclude substantial gainful activity.

(10) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The examining physician provided the following diagnosis: Chronic back pain, severe exogenous obesity, with BMI of 42, allergic rhinitis, gastroesophageal reflux disease, asthma, both exertional and allergy triggered. The physician made a general statement that claimant is totally unable to work but did not provide specific work related functional limitations. The physician's report, when taken in conjunction with medical record as a whole, does not establish a severe physical impairment that would totally preclude substantial gainful activity.

(11) Claimant's most prominent complaint is the depression and anxiety.

(12) Claimant has applied for Social Security disability benefits. Her application was recently denied but she filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on impairments listed in paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform light work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The department thinks the evidence of record shows that claimant retains the capacity to perform simple unskilled light work.

Based on claimant's vocational profile: younger individual, limited education and work history working as a janitor and childcare provider, MA-P was based on claimant's ability to perform light work. SDA was denied because the nature and severity of the claimant's impairments do not preclude work activities for 90 days.

LEGAL BASIS

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). Pursuant to Federal Rule 42 CFR 435.540, the Family Independence Agency 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.

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 does 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).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 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).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P and SDA purposes. PEM 260 and 261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by consideration of all factors in each particular case.

STEP 1

The issue at Step 1 is whether claimant is performing Substantial Gainful Activity (SGA). If claimant is working and is earning substantial income, she is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The medical/vocational evidence of record shows that claimant is not currently performing SGA.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Claimant must establish that he has an impairment which is expected to result in death, has existed for at least 12 months and totally prevents all basic work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP #3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

Therefore, claimant does not meet the Step 3 disability test.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant last worked as a janitor. This work was light work.

The medical evidence of record establishes that claimant has allergies and is obese. Claimant is also anxious and depressed.

The consulting psychologist who evaluated claimant did not report that claimant is totally unable to work.

Therefore, claimant does not meet the Step 4 disability test.

STEP #5

The issue at Step 5 is whether claimant has the Residual Functional Capacity to do other work.

Claimant has the burden of proof to show, by the medical/psychological evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on depression and anxiety. The consulting psychologist who evaluated claimant did not say she was unable to work. Claimant did not provide a DHS-49D or a DHS-49E to establish his mental residual functional capacity.

Second, the claimant alleges disability based on allergies and obesity. Claimant's family doctor thinks claimant is unable to work because she is emotionally unstable. However, the consulting psychologist disagrees.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her mental impairments in combination with her allergies and obesity. Claimant currently performs many Activities of Daily Living, has an active social life with her boyfriend. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary/light work (SGA). In this capacity, she is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter at [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis, as presented above.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does not meet the MA-P/SDA disability requirements under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P/SDA application, is, hereby, **AFFIRMED.**

SO ORDERED.

/s/

Jay W. Sexton
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: July 27, 2009

Date Mailed: July 29, 2009

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 receipt 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.

JWS/sd

cc:

