

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: 2007-19882  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 29, 2007  
Kalamazoo 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 in Kalamazoo on November 29, 2007. Claimant personally appeared and testified under oath.

The department was represented by Rich Miholick (Case Manager). The Administrative Law Judge appeared by telephone.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirements so that her new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence by the Record Close Date.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, continuously, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, continuously, for one year (MA-P)?

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 an MA-P applicant (January 24, 2007) who was denied by SHRT (September 28, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: Age 42; education -- 11th grade; post high-school education -- none; work experience -- cabdriver (three years), bartender, cashier for a gas station, and waitress.

(3) Claimant has not performed substantial gainful activity (SGA) since December, 2005 when she worked as a cabdriver.

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

- (a) Bipolar disorder;
- (b) Depression;
- (c) Anxiety disorder;
- (d) Panic disorder; and
- (e) Side-effects from psychotropic medications (diarrhea).

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

**OBJECTIVE MEDICAL EVIDENCE (September 28, 2007)**

Medical note of 3/2/2007 indicated claimant reported she had significant improvement with medications and was not voicing any complaint (Exhibit A-1). Progress note of 2/13/2007 reported claimant to be friendly and cooperative. Her cognition functions, such as memory, intellect, and orientation were intact (p. A-4).

Medical examination report of 2/1/2007 reported claimant to have diagnoses of bipolar depression; hepatitis C; HIV; chronic fatigue; and panic disorder. On examination, she appeared fatigued, heart and lungs were normal, and she had some mental impairment-related complaints (p. 3).

Infectious disease clinic note of 8/15/2006 indicated claimant reported having diarrhea as a side-effect of treatment which she could live with. She was able to maintain an "excellent activity level." Findings on physical exam were within normal limits (p. 18).

Treatment note of 10/12/2006 indicated claimant's condition was considered stable with the exception of an upper respiratory infection (p. 44).

Hospital records of 11/3/2006 reported claimant had a hysterectomy and a unilateral salpingo-oophorectomy (p. 99).

ANALYSIS: Claimant's HIV and hepatitis C have not resulted in any significant complications. There was no indication of a back condition or shortness of breath that would pose significant limitations. Prior to her hysterectomy, she had episodes of anemia, where her hematocrit levels were low and then would improve. This should have improved and her hematocrit levels leveled off in the normal range since her surgery.

Her mental condition was responding to medication and she was doing well.

\* \* \*

- (6) Claimant lives with her 16-year-old daughter, her mother and her sister.

Claimant performs the following activities of daily living (ADL's): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming and laundry. Claimant does not like to do her grocery shopping, so her sister does it for her. Claimant does not use a cane, walker, wheelchair or shower seat.

- (7) Claimant has a valid driver's license and drives an automobile approximately six times a month, primarily taking her daughter to school. Claimant is computer literate.

- (8) The following medical records are persuasive:

A February 1, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician provides the following diagnoses: bipolar/depression, chronic fatigue, hypertension, HIV, and panic disorder.

The physician reports the following physical limitations: Claimant is able to lift up to 10 pounds occasionally. She is able to stand and/or walk less than two hours in an eight-hour day. She is able to sit about six hours in an eight-hour day. Claimant is able to use her hands/arms normally and is able to use her feet/legs normally.

- (9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The clinical evidence of record shows that claimant has bipolar disorder, depression, and panic disorder. Claimant did not submit a DHS-49D or DHS-49E.

- (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 medical records do show that claimant has HIV and chronic fatigue. The consulting physician did not state claimant was totally unable to work.

(11) Claimant's most prominent complaints are bipolar disorder, anxiety disorder, panic disorder and depression.

(12) It is not known whether claimant has applied for federal disability benefits.

## CONCLUSIONS OF LAW

### **Claimant's Position**

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

### **Department's Position**

The department thinks that claimant is able to perform normal work functions. The department thinks that the medical evidence of record does not document a mental/physical impairment that significantly limits claimant's ability to perform basic work activities. The department denied claimant's MA-P application based on her failure to establish the required severity and duration.

### **Legal Base**

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 (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 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 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).

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 purposes. PEM 260. "Disability" as defined by MA-P standards is a legal term which is individually determined by a 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.

Claimants who are working and performing substantial gainful activity (SGA) are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

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

Claimant meets the Step 1 disability requirements.

### **Step 2**

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

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months from the date of application. 20 CFR 416.909. Also to qualify for MA-P, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limits her physical or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT found that claimant does not meet the severity and duration requirements.

Claimant does not meet the Step 2 disability requirements.

### **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.

Claimant does not meet the Step 3 disability requirements.

### **Step 4**

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a cabdriver. Claimant's work as a cabdriver may be defined as follows:

**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).

The medical/vocational evidence of record shows that claimant has the ability to perform light work. Since her previous position as a cabdriver required the ability to do light work; claimant is able to return to her previous work as a cabdriver.

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

### **Step 5**

The issue at Step 5 is whether claimant has the residual functional capacity (RFC) to do other work.

For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED] published by the [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform sedentary/light work. Claimant is able to work as a carry-out clerk at a grocery store, as a ticket-taker for a theater, as a pizza-delivery driver, as a parking-lot attendant, as a greeter for [REDACTED], or as a cabdriver.

Based on this analysis, the department correctly denied claimant's MA-P application.

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 disability requirements under PEM 260.

Claimant is not disabled for MA-P/SDA purposes, based on Step 5 of the sequential analysis, as described above.

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

SO ORDERED.

/s/ \_\_\_\_\_  
Jay W. Sexton  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 17, 2009

Date Mailed: August 18, 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/jj

cc:

