

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: 2007-17556
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 6, 2007
Oakland 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 November 6, 2007 in Royal Oak. Claimant personally appeared and testified under oath.

The department was represented by Janet Hopper (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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 medicals by the Record Close Date.

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 an MA-P/retro/SDA applicant (April 16, 2007) who was denied by SHRT October 3, 2007, based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for November, December 2006 and January 2007.

(2) Claimant's vocational factors are: age--32; education--10th grade; post-high school education--GED and certified as an Emergency Medical Technician (EMT); work experience--employed as an EMT for 3 years, as a home help aide and as a bus boy/dish washer.

(3) Claimant is not currently performing Substantial Gainful Activity (SGA).

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

- (a) Bipolar dysfunction;
- (b) Depression;
- (c) Panic disorder;
- (d) ADHD (Attention Deficit Hyperactivity Disorder);
- (e) Slipped disc;
- (f) Bone spurs;
- (g) Back dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (October 3, 2007):

A psychiatric evaluation, dated 1/16/2007, showed claimant was admitted due to severe depression, impaired reality testing and dangerous to herself. She was disheveled, unkempt and dressed in a hospital gown. Speech was overall coherent. Mood was very depressed, hopeless, helpless and with suicidal thoughts. Thought processes seemed to be fairly illogical, though no paranoia. Affect

was quite labile (Exhibit A1, page 47). Her diagnosis included bipolar disorder, mixed to depressed, attention deficit disorder and polysubstance abuse (A1, page 48). She was noted to have ethanol, cocaine, heroin and marijuana abuse (A1, page 15).

In 9/2006, claimant had good eye contact. Speech was logical and coherent. Affect was appropriate. There were no delusions or hallucinations. Claimant reported she had decreased her use of drugs and alcohol (A1, page 5).

ANALYSIS: Claimant has a history of polysubstance abuse. When she was admitted in 1/2007, she had taken heroin and tried to overdose on Lexapro. In 9/2006 when she had taken her medications and decreased her use of drugs and alcohol, her mental status exam was within normal limits.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, laundry and grocery shopping.

(7) The following medical records are persuasive:

(a) A September 22, 2007 psychiatric assessment was reviewed:

The psychiatrist provided the following history: Client had 3 admissions this year--in May, July and September. She came to [REDACTED] in July after her admission to [REDACTED] for a suicidal attempt by overdosing on pills. Client was admitted to [REDACTED] in [REDACTED] for a suicidal attempt by overdosing also. In July, client was treated with Lexapro TN and Neurontin. However, patient was not compliant and was admitted to [REDACTED] in September 2006 for suicidal ideation, depression, paranoia, and severe anxiety. Client was in the hospital for 2 weeks.

Now client reported she's feeling better and she's less depressed. She denied any suicidal ideation. Sleeping better with medications. She is not paranoid. She stated that she is taking her meds regularly and that she has no side effects.

The psychiatrist provided the following DSM diagnoses:

Axis I Primary--Bipolar disorder, most recent depressed-severe without psychotic features.

Secondary--Alcohol abuse.

Axis V--GAF 53.

- (b) A February 14, 2007 Mental Residual Functional Capacity Assessment was reviewed. The psychiatrist provided the following work activities in which claimant is markedly limited in: (11) The ability to complete a normal workday and workweek without interruptions; (14) the ability to accept instructions and respond appropriately to criticism from supervisors; (17) the ability to respond appropriately to change in the work setting; (18) the ability to be aware of normal hazards and take appropriate precautions; and (19) the ability to travel in unfamiliar places or use public transportation.

(8) The medical evidence of record does not establish a severe mental impairment expected to prevent claimant from performing any substantial gainful work on a sustained basis.

(9) The medical evidence of record does not establish a severe physical impairment expected to prevent claimant from performing any substantial gainful work on a sustained basis.

(10) Claimant recently applied for federal disability benefits with the Social Security Administration; Social Security denied her application.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant's medical evidence is insufficient to meet the severity and duration requirements for MA-P and SDA. The department thinks that claimant is not eligible for MA-P/SDA due to her drug and alcohol abuse. The department cited Public Law 104-121 as a basis for denial.

The department denied MA-P/SDA benefits due to claimant's failure to establish impairments which meet the severity and duration requirements.

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 (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 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.

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/SDA purposes. PEM 260 and 261. "Disability," as defined by MA-P/SDA 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 or engaging in work of a type generally performed for pay. PRM Glossary, page 34.

The evidence of record shows that claimant last worked as an EMT in October 2005. She is not currently employed.

Therefore, 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.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means the severe impairment is expected to last for 12 continuous months or result in death.

SHRT denied MA-P eligibility based on claimant's chronic abuse of drugs and alcohol. SHRT denied claimant's application for SDA based on a lack of severity.

The medical/vocational record does establish that claimant has had several severe episodes of depression, bipolar and anxiety. These conditions appear to have lasted approximately one month or less. The record also establishes that claimant was hospitalized and treated for her acute mental impairments. However, the treatment was successful and claimant did not establish that she meets duration during the period in question.

Claimant does not meet the department's severity and duration requirement.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege a listing as the basis for her disability.

Claimant does not meet the Step 3 disability requirements.

STEP 4

The issue at Step 4 is whether claimant has the ability to do her previous work. Claimant previously worked as an Emergency Medical Technician (EMT). Claimant was fired from her EMT position in October 2005.

Claimant's EMT position may be defined as follows:

Medium work. 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).

There is no medical/vocational evidence in the record to show that claimant has a physical impairment that would preclude her from returning to her work as an EMT. She is currently certified by the [REDACTED] to work as an EMT.

Claimant's medical evidence regarding her mental impairments is problematic. While it is true that claimant has had several severe mental health issues (bipolar, depression, anxiety, ADHD), there is little in the medical record to establish that claimant is currently totally unable to work for mental health reasons. Based on this analysis, claimant is able to perform her previous (medium) work as an EMT.

Therefore, claimant is not eligible for MA-P/SDA based on Step 4 of the sequential analysis.

STEP 5

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

The medical/vocational evidence of record establishes that claimant is able to perform medium work. The medical evidence further establishes that claimant's current mental health issues do not totally preclude her from performing as a ticket taker for a theatre, as a parking lot attendant, or as a greeter for [REDACTED]

During the hearing, claimant testified that she suffers from back dysfunction with pain. Evidence of pain, alone, is insufficient to establish disability.

The Administrative Law Judge concludes that claimant's testimony about her back pain is credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her back dysfunction in combination with her pain.

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 and 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: August 14, 2009

Date Mailed: August 17, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

cc:

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