

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: 2007-23407
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 5, 2007
Muskegon 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 Muskegon on December 5, 2007. Claimant personally appeared and testified under oath.

The department was represented by Lee Ann Lentner (FIM). The Administrative Law Judge appeared by telephone from Lansing.

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) or 90 days (SDA)?
- (2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, continuously, 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/SDA applicant (June 4, 2007) who was denied by SHRT (October 31, 2007) due to claimant's ability to perform medium unskilled work. SHRT relied on Med-Voc Rule 203.28 as a guide.
- (2) Claimant's vocational factors are: Age 40; education -- high-school diploma (special education); post high-school education -- none; work experience -- janitor for [REDACTED].
- (3) Claimant has not performed substantial gainful activity (SGA) since she was a janitor at [REDACTED] in November, 2006.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Bipolar disorder;
 - (b) Anger disorder; and
 - (c) Arthritis in the back.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (October 31, 2007)

A mental status exam, dated 4/30/2007 showed claimant's grooming and hygiene were appropriate. Speech was loud and inappropriate. Affect was heightened, labile, irritable, angry and

quite frankly somewhat abusive toward the physician. Thought content was immature, blaming others and lacking insight (p. 10).

On 6/1/2007, claimant was groomed appropriately. Her speech as of normal tone and tenor, relevant and coherent. Affect was broad and relaxed. She continued to struggle with some mood lability and dys-regulation. Cognitive function was within normal limits. Thought content was more insightful, no perceptual disturbance or evidence of psychoses. There was no psychomotor agitation or retardation, gait and stance were within normal limits. The diagnosis was bipolar disorder NOS, borderline intellectual functioning and borderline personality disorder (p. 12).

ANALYSIS: Claimant has a history of mood lability without psychotic symptoms. However, with treatment her mental status was improving. In 6/2007, she was relevant and coherent. She still struggled with mood lability, but there were no perceptual disturbances. Claimant would be able to do simple unskilled [medium] work.

* * *

(6) Claimant lives with her husband and performs the following activities of daily living (ADL's): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry, and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower seat.

(7) Claimant has a valid driver's license and drives an automobile approximately four times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

A [REDACTED] [REDACTED] psychiatric evaluation was reviewed.

History of Present Illness:

Claimant was originally seen as a walk-in following a stay at [REDACTED]. She was treated there for depression. She believes this current episode started around November and around that time. She had depressed appetite, weight loss, headaches, suicidal ideation and sleep disturbance. She quit her job which had been providing insurance for herself and her family. This resulted in an increase in familial conflict.

Past Psychiatric History:

Claimant was at [REDACTED] on November 6, 2006. She never sustained any psychiatric hospitalization. While there, she was treated with Seroquel and Prozac. She reports being on Paxil in the past which she states worked "pretty good." She was put on Ritalin as a child, but can't remember whether or not it was effective. She states it was given to her because of her "temper tantrums." She has also been prescribed Mellaril which gave her bad dreams and "a nasty reaction." She was unable to be more specific about what the reaction was. She had individual therapy at [REDACTED] and found this to be helpful. She first had therapy at age 13. She was having difficulty with communication in school, was crying easily and her grades dropped so her parents sent her to a therapist. She does feel she has had difficulty with increased episodes of depression in the post-partum period.

Claimant does not smoke cigarettes. She has six 12-ounce bottles of caffeinated pop per day. She has not used alcohol for nine years or more. She denies the use of other substances and has never been through substance abuse treatment.

Psychosocial History:

* * *

Claimant did graduate from high school, but attended special education during the end of her high-school career. She has not had any further training or education. She reports she tried taking classes at [REDACTED], but it was "beyond my abilities." (She does have a full-scale I.Q. of 72.) She denies any legal entanglements. She has declared bankruptcy in the past. Job history includes working at [REDACTED] for approximately six months as a janitor. She reports she was having difficulty with post-partum depression and got fired because she wasn't doing her job well enough. She also worked in housekeeping at [REDACTED] for five years but

walked out after she was told by a supervisor that she talks too much.

Mental Status:

This is a 40-year-old female who appears her stated age. Her grooming and hygiene are appropriate for weather and office conditions. Speech is of normal tone and tenor, but occasionally becomes quite loud, heightened and almost whining while in my office. I have to redirect her several times to lower her voice and speak in a more normal tone. She is not always particularly relevant, frequently bringing up perceived injustices from the past that don't really have a lot to do with the questions I am asking right now. She displays affective instability and did so during her initial Assessment as well as commented on by [REDACTED]. Mood is heightened. She is frequently cheerful and perseveres over perceived injustices and insults from the past, some of them from as long ago as age 13. She clearly has difficulty assimilating and/or moving on from some of these experiences.

There is no endorsement of symptoms of obsessive/compulsive disorder. In giving the mood disorder questionnaire, she answered 'no' to 'felt good or hyper' and 'got less sleep and didn't miss it.' She answered yes to all the other questions. I did read her this questionnaire because of her difficulty with reading comprehension, so that test came back somewhat positive. No endorsement of sleep disturbance or appetite changes at the present time. No endorsement with difficulties of kleptomania, excessive gambling or eating disorder. Thought content is very concrete, lacks insight and displays evidence of borderline intellectual functioning, but there is no endorsement or evidence of perceptual disturbance, thought blocking or insertion, paranoia or delusion. She is alert and oriented to all spheres. There is no psychomotor agitation or retardation, gait and stance are within normal limits. No homicidal or suicidal ideation.

Diagnosis: Axis I -- Bipolar disorder, NOS; Axis V/GAF -- 65.

(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. Claimant has been evaluated by a [REDACTED] psychiatrist. He provided a diagnosis of bipolar disorder, NOS; and Axis V/GAF--55. Claimant did not submit a DHS-49D or a 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. The medical records do show that claimant has a history of arthritis pain and a history of seizure at approximately age four. No significant work limitation was reported by the reporting physicians.

(11) Claimant's most prominent complaint is her bipolar disorder.

(12) Claimant applied for federal disability benefits with the Social Security Administration. Her application was recently denied. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

Claimant's Position

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

Department's Position

The department thinks that claimant has the residual functional capacity to perform unskilled medium work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing. Based on claimant's vocational profile (younger individual at age 40 with a high-school education and a history of working as a janitor), the department denied MA-P based on Med-Voc Rule 203.28. The department denied SDA

benefits because the nature and severity of claimant's impairments do not preclude medium work for a period of 90 days.

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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) 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 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 260/261. "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.

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 existed or be expected to exist for a continuous period of at least 12 months from the date of application. 20 CFR 416.909. Also to qualify for MA-P/SDA, claimant must satisfy both the gainful work and 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 meets the severity and duration requirements.

Claimant meets 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.

Therefore, 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 janitor for [REDACTED]. Claimant's previous work as a janitor 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).

The medical/vocational evidence of record shows that claimant's ability to do medium work is intact. Since claimant's previous work as a janitor was medium work, she is able to return to her previous work.

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] [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled medium 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 or as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to her return to work was low back pain due to arthritis. Evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

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

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Claimant currently performs numerous activities of daily living, has an active social life, and drives an automobile four times a month. Also, claimant is computer literate. This means that claimant is able to perform sedentary/light/medium unskilled work (SGA).

Based on this analysis, the department correctly denied claimant's MA-P/SDA 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/SDA disability requirements under PEM 260 and 261. 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/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 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

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