

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: 2008-15278
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 13, 2008
Jackson 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 Jackson on August 13, 2008. Claimant personally appeared and testified under oath.

The department was represented by Ron Wicks (FIM).

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, **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 (August 31, 2007) who was denied by SHRT (April 25, 2008) 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—32; education—9th grade; post high school education—none; work experience—worked as a laborer for a dry cleaners.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 1998 when she worked as a laborer at a dry cleaners.

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

- (a) Bipolar disorder;
- (b) Manic depression;
- (c) Hepatitis;
- (d) History of substance abuse.

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

OBJECTIVE MEDICAL EVIDENCE (April 25, 2008)

PHYSICAL: According to a 12/2007 consultative exam, claimant has an extensive history of poly substance abuse. On exam, she was 5 feet 3 inches and 166 pounds with a normal blood pressure, clear lungs, and no liver enlargement. Her physical exam was normal (pages 2-6).

MENTAL: In 10/2007 she was in out-patient treatment for bipolar disorder and poly substance abuse. She alleged auditory hallucinations, but her mental status exam was mostly unremarkable (pages 18-23).

ANALYSIS: There was no evidence of a disabling mental or physical impairments that would preclude basic work activity.

(6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping.

(7) Claimant was hospitalized at the psychiatric unit at [REDACTED] for 2 days in [REDACTED]. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear a brace on her neck, arms or legs.

(8) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.

(9) The following medical/psychological records are persuasive:

(a) A December 20, 2007 internal medicine narrative evaluation was reviewed.

The physician provided the following history:

Claimant has a history of cocaine abuse and marijuana. She even states that she used last week. She states that she has had injury to her liver from overdosing and I suspect these overdoses were suicidal attempts, as she has a strong mental health history and apparently has been hospitalized for mental health issues and has had a nervous breakdown. Claimant does relate a history of abuse as a child. However, she does not state that she has ever been diagnosed with chronic hepatitis.

Social History: Claimant is single and is the mother of 6 children, all of whom have been adopted out. She smokes one half pack of cigarettes a day and has done so for 15 years. She currently denies any alcohol drinking. She does state that she has a couple of cups of coffee a week.

She does admit to a past history of alcohol and marijuana and cocaine abuse and even use within the last week of cocaine.

The physician provided the following impression:

- (1) History of significant psychological issues;
- (2) History of polypharmacy abuse;
- (3) History of possible liver damage from overdosing;
- (4) No stated history of hepatitis C or B and no evidence of significant hepatic problems.

(b) An October 8, 2007 psychiatric evaluation was reviewed. The psychiatrist provided the following diagnoses:

- (1) Mood disorder NOS, rule out bipolar disorder;
- (2) Poly substance abuse.

Access V/GAF—50 (moderate).

(10) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The consultative psychiatric evaluation showed the following diagnoses: mood disorder, NOS, rule out bipolar disorder; poly substance abuse. Access V/GAF—50 (moderate). Claimant did provide a DHS-49D, however it is illegible and does not clearly show her current mental residual functional capacity.

(11) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical vocational records show the following diagnoses: history of significant psychological issues; history of polypharmacy abuse; history of possible liver damage from overdosing; no stated history of hepatitis C or B and no evidence of significant hepatic problems. There is no medical/vocational evidence in the record to establish that claimant has any physical impairments which would limit her ability to do normal work activities.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC).

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department denied claimant's MA-P/SDA application based on claimant's failure to establish an impairment which meets the department's 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).

The department evaluates impairments based on mental illness using the following standards.

(a) **Activities of Daily Livings (ADLs).**

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) **Social Functioning.**

...**Social functioning** refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) **Concentration, Persistence, or Pace.**

...**Concentration, persistence or pace** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

(d) **Sufficient Evidence.**

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical

evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) **Chronic Mental Impairments.**

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

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, or otherwise 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.

Therefore, claimant meets the Step 1 disability test.

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. 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).

If claimant does not have an impairment or combination of impairments which profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria.

The medical records of evidence, do not establish that claimant's mental impairments totally preclude all work activity.

The Administrative Law Judge, based on claimant's recent psychiatric evaluations concludes that claimant's diagnosis of mood disorder, rule out bipolar disorder with poly substance abuse does not constitute a severe impairment at this time.

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 Listing.

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 previously worked as a clerk laborer for a dry cleaner. Claimant's work at the dry cleaner is

sedentary work. The medical/physiological evidence of record does not establish that claimant can no longer work as a clerk/laborer for a dry cleaner.

Due to lack of evidence to the contrary, the Administrative Law Judge concludes that claimant is able to return to her previous work as a clerk/laborer for a dry cleaner.

STEP 5

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

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

Claimant alleges that she is disabled based on her personality disorder, possible bipolar disorder and history of poly substance abuse. Claimant did not submit a completed DHS-49D or a DHS-49E to establish her mental residual functional capacity. Second, claimant does not have any significant physical impairments at this time that would totally prevent her from performing sedentary work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to perform sedentary work based on her mental impairments (personality disorder with rule out bipolar disorder). Claimant currently performs numerous Activities of Daily Living (ADLs) and has an active social life with her live-in partner. Considering the medical record as a whole, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform unskilled sedentary work (SGA). She is able to work as a ticket taker at a theater, as a parking lot attendant and as a greeter for [REDACTED].

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: September 21, 2009

Date Mailed: September 25, 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 receipt date of the rehearing decision.

JWS/vmc

cc:

