

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: 2008-16822

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 22, 2008

Livingston 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, an in-person hearing was held in Howell on July 22, 2008. Claimant personally appeared and testified under oath.

The department was represented by Janet Schuster (Community Coordinator).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team on July 23, 2008. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge issued the decision below.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for 90 days (SDA)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for 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 SDA applicant (November 28, 2007) who was denied by SHRT (May 8, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age--51; education--7th, post-high school education--none; work experience--none.

(3) Claimant is not currently performing Substantial Gainful Activity (SGA) since she is not currently working outside the home.

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

- (a) Memory dysfunction;
- (b) Panic attacks;
- (c) Sleep dysfunction;
- (d) Stress disorder;
- (e) Inability to concentrate.

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

OBJECTIVE MEDICAL EVIDENCE (██████████)

A ████████ consultative exam noted that claimant was being treated for anxiety by a neurologist. She was taking anti-anxiety medication. Her mental status exam was normal. She was diagnosed with acute stress disorder with panic episodes (pages 19-24). In ████████, her neurologist noted anxiety disorder with insomnia and indicated she had decreased concentration and memory (pages 5-6).

ANALYSIS: Claimant's alleged impairments do not meet/equal the intent or severity of a Social Security listing (12.04, 12.06). There is no evidence of a disabling mental impairment that would preclude basic work activity.

* * *

(6) Claimant has a live-in partner, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear a neck brace, or braces on her arms or legs.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is not computer literate.

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

(a) A [REDACTED] report was reviewed.

The neurologist provided the following background:

Claimant who is a 50-year-old female was seen by me again on [REDACTED]. She has had significant domestic and other problems. She has only a 7th grade education. She has had extreme amounts of generalized anxiety and anxiety attacks. This has been present for more than 20 years, and one would expect this to be a relatively permanent condition which will require medication.

There is no reason to suspect that this disorder would be short-term or resolve quickly. She is significantly depressed, unable to sleep. She has no ability to concentrate. I did determine her with this condition in [REDACTED]. It has maintained the same and continues.

I do not believe she is in any way employable, nor will she be. She should be eligible for State Disability Assistance. There is nothing in the medical record that would contradict that.

* * *

Note: Claimant's treating physician has given less than sedentary work restrictions, based on claimant's mental

impairments (generalized anxiety, anxiety attacks, depression, and poor concentration). However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence.

* * *

(9) 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. Claimant testified that she is unable to concentrate, has extreme anxiety, and is unable to obtain a normal night's sleep. However, there are no psychiatric/psychological reports in the record. Also, claimant did not provide a DHS-49D or a DHS-49E to show her mental residual functional capacity. The medical source opinion, dated [REDACTED], from her neurologist, is inconsistent with the great weight of the objective medical evidence in the record.

(10) Claimant recently applied for federal disability benefits with the Social Security Administration. The Social Security Administration denied her application. Claimant has filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he is entitled to SDA based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform normal work activities.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing (12.04 and 12.06). The department denied disability under

SDA because 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 SDA due to lack of severity and duration under PEM 261.

LEGAL BASE

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 SDA purposes. PEM 261. "Disability," as defined by 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 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 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/psychological evidence of record does not satisfy the severity/duration requirements under Step 2.

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 relevant Listings 12.04/12.06 (for mental impairments).

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 has no work history.

Since claimant has no work history, the Administrative Law Judge will use the standards for unskilled sedentary work. The medical evidence shows that claimant is able to perform unskilled sedentary work at this time.

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 SDA purposes.

Claimant thinks that she is entitled to SDA based on a memory impairment, panic attacks, sleep dysfunction, a reduced ability to concentrate and stress disorder. These impairments fall in the category of mental impairments and do not, individually, or in combination, meet the definition of a severe impairment for SDA purposes.

Claimant does not allege disability based on a physical impairment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her acute stress disorder, panic attacks, decreased concentration, decreased memory, and sleep dysfunction, taken collectively, do not meet SDA standards for a severe impairment which has lasted **continuously** 90 days. Claimant currently receives treatment from a neurologist and currently takes psychotropic medications. The entire medical record shows that claimant is able to perform unskilled sedentary work. Claimant is able to work as a bagger for a grocery store, as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. She is also able to do light janitorial work.

The medical evidence of record does not establish that claimant has a severe mental impairment, medically documented, for the required duration. The medical evidence in the

record is contradictory, and does not show that claimant is totally unable to do any (sedentary) work. The MSO will not be given controlling weight under 20 CFR 416.927c or 20 CFR 416.927d.

The department correctly denied claimant's 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 SDA disability requirements under PEM 261.

Accordingly, the department's denial of claimant's SDA application is, hereby, AFFIRMED.

SO ORDERED.

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

Date Signed: February 9, 2009

Date Mailed: February 10, 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:

