

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: 2008-18886
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 3, 2008
Gladwin 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 Gladwin on September 3, 2008. Claimant personally appeared and testified under oath.

The department was represented by Nancy Doyle (FIS).

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 (January 8, 2008) who was denied by SHRT (June 11, 2008), due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age—42; education—high school diploma; post-high school education—cosmetology school; work experience—nurse aide/caregiver and nail technician.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2002 when she worked as a nurse aide/caregiver for the elderly.

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

- (a) Status-post leg injury (2005);
- (b) Status-post neck injury (2005);
- (c) Status-post lower back injury (2005);
- (d) Short attention span;
- (e) Anxiety;
- (f) Bipolar disorder;
- (g) Multiple personality disorder;
- (h) Currently receiving psychotherapy.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 11, 2008):

A DHS-49 form, dated 2/2008, indicated claimant had post traumatic arthritis. She had no congestion and no rhonchi. She had muscle spasm, but no neurological deficits. She also has a history of bipolar disorder (page 11). The doctor indicated claimant had restricted range of motion (ROM) of the left knee. She could occasionally lift 20 pounds and stand/walk less than 2 hours. However, she does not medically require the use of an assistive device for ambulation (page 12).

A [REDACTED], dated [REDACTED], showed claimant's diagnosis included panic disorder without agoraphobia, dysthymic disorder, and alcohol dependence (page 33). Claimant also has a history of cocaine/crack use (page 38). Her mental status showed she walked slowly. Her speech was within normal limits. Her mood was interval and her affect was angry (page 40). Thought process was within normal limits. Thought content was also within normal limits. She indicated she had difficulty falling asleep (page 39).

A physical exam, dated 5/2007, showed claimant sustained a soft tissue injury to the lateral aspect of the left thigh which resulted in operative intervention. Her musculoskeletal exam was unremarkable (page 71). She had slightly decreased ROM of the left knee (page 72). Motor strength and tone were normal. There was some sensory loss around the peri-incisional area. There was hyporeflexia in the left knee. She walked with a moderate left sided limp, without the use of an assistive device (page 74).

ANALYSIS:

Claimant had a [motor vehicle] injury in 2005. She has some restriction of motion of the left knee. She is able to walk without assistance. There is no evidence of muscle atrophy or wasting. There is on muscle weakness. The claimant has a history of substance abuse. Her mental status exam was within normal limits, except for her mood was irritable and her affect was angry. Claimant's treating physician has given less than sedentary work restrictions based on claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence, and per 20 CFR 416.927c and 20 CFR 416.927d, will not be given controlling weight. The collective objective medical evidence shows that claimant is capable of performing simple, unskilled, medium work.

(6) Claimant lives with her mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing and grocery shopping (sometimes). Claimant uses a cane infrequently. She does not use a walker, a wheelchair, or a shower stool. She does not wear braces on her neck, arms or legs. Claimant was recently hospitalized for a bowel obstruction.

- (7) Claimant does not have a valid driver's license and does not drive an automobile.

Claimant is not computer literate.

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

- (a) A [REDACTED] was reviewed.

The licensed MA psychologist provided the following clinical impressions:

For more than 6 months [claimant] feels restless and on edge, is easily fatigued and has problems concentrating; is most often irritable. She has difficulty falling and staying asleep. The focus of her anxiety is not about specific incident or about embarrassment of being in public, though she avoids being in public. SOB (shortness of breath), chronic pain from a leg injury 4/2005, worry, history of DUIIL [driving while intoxicated] in 4/2005 and recently arrested for DV (domestic violence) in 11/2007. She states she was intoxicated, but denies any kind of chemical use.

The MA licensed psychologist provided the following diagnoses:

Axis I—Panic disorder without agoraphobia, dysthymic disorder, and alcohol dependence.

Axis V/GAF—42.

- (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 been diagnosed with anxiety disorder, bipolar disorder and multiple personality disorder. However, the MA psychologist provided the following clinical diagnoses: Panic disorder without agoraphobia, dysthymic disorder, and alcohol dependence. Claimant did not provide a DHS-49D or a DHS-49E to show her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. While it is true, that claimant treating physician reports that she is totally unable to work, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record, and is contradicted by claimant's testimony at the hearing.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant has 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 the residual functional capacity to perform unskilled, medium work.

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

Based on claimant's vocational profile [younger individual (age 42), with a 12th grade education, training as a cosmetologist, and a history of unskilled work as a chore services provider], the department denied MA-P based on Med-Voc Rule 203.28 as a guide.

The department denied SDA based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for 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 (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).

The department evaluates mental illness as a basis for disability using the following standards:

(a) **Activities of Daily Living.**

...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, histories 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 and 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. Claimant's 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 disability criteria.

The combination of claimant's post traumatic arthritis and hepatitis C in combination with her panic disorder and dysthymic disorder constitute impairments which meets the severity and duration 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 test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a chore service provider/nurse aide for the elderly. This work was unskilled, medium work.

Claimant's treating physician (MSO) opined that claimant is totally unable to work. The Administrative Law Judge does not concur that claimant is totally unable to work due to her physical impairments.

However, claimant has mental impairments which preclude her from developing rapport with her elderly patients.

Based on claimant's combination of mental and physical impairments, she is not able to return to her previous work as a chore service provider/nurse aide. Claimant meets the Step 4 disability test.

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.

First, claimant alleges disability based on short attention span, anxiety disorder, bipolar disorder and multiple personality disorder. a mental disorder: However, the [REDACTED] [REDACTED] carries the diagnosis of panic disorder, without agoraphobia, dysthymic disorder and alcohol dependence. Based on claimant's mental impairments, alone, she has not established that she is totally unable to work.

Second, claimant alleges disability based on a leg injury, neck dysfunction with pain and lower back dysfunction with pain. Claimant's treating physician states that she is totally unable to work. However, this medical source opinion (MSO) cannot be given controlling weight because it is contrary to the great weight of the objective medical evidence in the record as well

as claimant's testimony at the hearing. The Administrative Law Judge does not think claimant is totally unable to work based on her physical impairments.

During the hearing, claimant testified that a major impediment to her return to work was her back dysfunction with pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

Claimant's testimony about his 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 mental impairments, in combination with her physical impairments. Claimant currently performs several Activities of Daily Living and has a social life with her mother, with whom she lives. Claimant also has several friends that she travels to visit. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform unskilled sedentary work (SGA). In this capacity, claimant is able to work as a ticker taker for a theatre, 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 the 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: January 7, 2009

Date Mailed: January 8, 2010

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/sd

cc:

