

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: 2008-23482
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 24, 2008
Wayne 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 Hamtramck on September 24, 2008. Claimant personally appeared and testified under oath.

The department was represented by Patricia Colvin (medical contact worker).

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 (April 4, 2008) who was denied by SHRT (July 14, 2008) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant vocational factors are: age—37; education—high school diploma; post high school education—attended [REDACTED] and obtained a certificate as a nurse aid; work experience—volunteers at a group home, employed as a direct care worker at a group home, worked as a nurse aid.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when she was a direct care worker for Judson Center (group home).

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

- (a) Has difficulty walking;
- (b) Has difficulty climbing stairs;
- (c) Shortness of breath;
- (d) Hypertension;
- (e) Asthma;
- (f) Diabetes;
- (g) Depression;
- (h) Anxiety;
- (i) Hears voices;
- (j) Panic attacks;
- (k) Afraid to go outside;
- (l) Recently attempted suicide twice.

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

OBJECTIVE MEDICAL EVIDENCE (July 14, 2008)

Mental status evaluation of 4/23/2008 reported claimant was dressed and groomed appropriately. Her memory and intelligence were good. She was oriented x3. She was in contact with reality as

well as calm and cooperative. Axis I diagnosis was schizoaffective disorder, rule out bipolar disorder (page 1a).

Medical examination report of 4/07/2008 reported findings on the physical portion of the exam to be within normal limits (page 26).

ANALYSIS: Her mental condition may make performing skilled work difficult.

Her physical condition should pose no significant limitations. Her medical opinion was considered in light of CFR 416.927. The evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

(6) Claimant's lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning (sometimes), mopping, vacuuming and grocery shopping (needs help). Claimant needs help putting on her socks. Claimant does not use a cane, a walker, a wheel chair or a shower stool. She does not wear a brace on her neck, her arms or legs. Claimant was hospitalized in August 2008 for an enlarged heart.

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

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

(a) An [REDACTED] adult psychiatric evaluation was reviewed.

The psychiatrist provided the following history:

Last week I stayed two hours at receiving hospital because I was depressed and out of medicine because I don't have money to buy them. The social worker at Hamtramck referred me here. It was about a week ago. I am in need of psychiatric help. I am depressed and anxious and anger easily. I am afraid I might hurt myself. I do not sleep well.

The psychiatrist provided the following mental status evaluation:

Mentally, she is full contact with reality. Her self-esteem is diminished. Psycho motor activity is within normal limits. She is still calm, but unpleasant, she is cooperative in giving information. Motivation is decreased a bit. She did not exaggerate or minimize her problems. Her story seems to be reliable.

Thought content: she claimed she hears voices belonging to a man calling her name for about two years now. She also sees dead people at times, including her baby's father who is dead at this time and is disturbed by that. No paranoid ideations, but confessed to be irritable, impulsive, having loose sex, and can be very active and not sleep for almost three days in the past when the episode comes. Currently she denied suicidal planning or ideations. She confessed she needs help.

The psychiatrist provided the following DSM diagnoses:

Axis I—schizoaffective disorder, mixed type. Rule out bipolar I disorder, mixed type with psychotic features.

Axis V/GAF—45.

- (b) A [REDACTED] internal medicine evaluation was reviewed.

The internist provided the following history: The patient is a 36-year-old African American female with a history of asthma, diabetes and congestive heart failure and obesity. The patient was diagnosed to have diabetes in 1966. She denies any history of diabetic retinopathy or neuropathy. No history of dialysis being considered yet. No oliguria, polyuria or polydypsia. Her blood sugars are in the range of 100-200 in the morning. No history of frequent hospitalizations from hyperglycemia or hypoglycemia. She has difficulty breathing and was diagnosed with congestive heart failure for the last one year. She is morbidly obese with a weight of 212 pounds and a height of 5 feet 2 inches. She has been diagnosed to have possible asthma and enlarged heart according to her statement. No current

complaints of PMD, orthopnea, pedal edema, palpitations, chest pain or syncopal episodes. There are no other complaints of hypertension, MI, angina, CVA, TIA, seizures, liver or kidney problems. Asthma is being controlled with home nebulization treatments with Albuterol. She remains independent for activities of daily living.

The internist provided the following impression:

- (1) Obesity;
- (2) History of possible obstructive sleep apnea;
- (3) Asthma;
- (4) Congestive heart failure, class II;
- (5) Diabetes type II.

(9) The probative psychiatric 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 has depression, anxiety, fear of going outside, panic attacks, hears voices, and has two recent suicide attempts. The recent psychiatric evaluation (April 23, 2008) provides the following diagnosis: schizoaffective disorder, mixed type; rule out bipolar I disorder, mixed with psychotic features. GAF/45. No information on recent suicide attempts was provided by the psychiatrist. No work limitations were provided by the psychiatrist. Also, 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. The recent internal medicine examination provided the following impressions: obesity; history of possible obstructive sleep apnea; asthma; congestive heart failure, class II; diabetes, type II. The internist did not report any work limitations.

(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 a wide range of unskilled work.

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

The department thinks that claimant retains the residual functional capacity to perform normal work activities.

Based on claimant's vocational profile [younger individual (age 37), high school education and a history of unskilled work], MA-P was denied using Med-Voc Rule 204.00 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 allegations of disability based on mental impairments according to the following policy.

(a) **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** 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** 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).

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 has recently been doing volunteer work as a group home direct care worker. She recently worked 3 days as a volunteer for [REDACTED] and provided services to the old people who live there. She also has applied for work recently, on 3 separate occasions.

These activities establish that claimant is capable of performing substantial gainful activity, and in fact did perform substantial gainful activity as a volunteer within the last 60 days.

Therefore, claimant does not meet 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.

Since the severity and duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

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.

However, claimant does not meet the applicable SSI 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 direct care worker for an adult foster care home.

There is no medical evidence in the record to establish that claimant is not able to return to her work as a chore service provider. In fact, she has recently volunteered to do chore service work for a local adult foster care facility.

Based on the lack of probative evidence to establish that she is totally unable to return to her previous work as a chore care provider, and based on her recent activity as a chore service volunteer, claimant is able to return to her previous work as a chore service provider.

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 her mental impairments (depression, anxiety, and her fear of going outside). The medical evidence of record does not establish that claimant's mental impairments are totally disabling.

The April 23, 2008 psychiatric report provides an Axis I diagnosis of schizoaffective disorder, mixed type and rule out bipolar I disorder, mixed type with psychotic features. Claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on difficulty walking, difficulty climbing stairs, shortness of breath, high blood pressure, asthma. The medical evidence in the record shows diagnoses of obesity, history of possible obstructive sleep apnea, asthma, congestive heart failure, class II and diabetes type II. There is no medical evidence in the record to establish that 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 due to arthritis pain. Claimant has difficulty walking and climbing stairs, apparently due to arthritis. There is no medical evidence in the record to establish that claimant has arthritis of such severity that she is totally unable to work.

During the hearing, claimant testified that a major impediment to her return to work was her joint pain secondary to her arthritis. Unfortunately, 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 profound and 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 joint dysfunction and her mental impairments. Claimant currently performs many activities of daily living and has an active social life at the adult foster facilities where she volunteers. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary/light work (SGA). In this capacity, she is able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis, as described 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: January 19, 2010

Date Mailed: January 20, 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 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

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