

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: 2008-25676
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 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 on October 29, 2008, in Hamtramck, Michigan. 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.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to SHRT on March 2, 2009. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, 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 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 (February 28, 2008) who was denied by SHRT (August 4, 2008) due to claimant's ability to perform unskilled sedentary/light work.

(2) Claimant's vocational factors are: age—43; education—7th grade; post high school education—none; work experience—home help aide funded by [REDACTED], presser at drycleaners, and deli worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007, when she worked as a home help aide.

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

- (a) Low back pain;
- (b) Unable to stand up straight;
- (c) Numbness in legs and hands;
- (d) Lumbar disc dysfunction;
- (e) Receives treatment from Pain Clinic;
- (f) Falls unexpectedly;
- (g) Bloody stools.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

SHRT evaluated claimant's disability application using SSI Listings 1.02, 1.04, 4.04 and 3.01. Claimant is not eligible based on these listings.

SHRT denied claimant's application because claimant is capable of performing sedentary/light work under 20 CFR 416.967(a)(b).

* * *

(6) Claimant has a live-in partner, and performs the following Activities of Daily Living (ADLs): dressing, bathing (with shower stool), and grocery shopping (sometimes). Claimant uses a cane on a daily basis. Claimant does not use a walker, wheelchair, shower stool and she does not wear braces on her neck, back, arms or legs. Claimant did not receive inpatient hospital care in [REDACTED].

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

(8) The following medical records are persuasive:

(a) A [REDACTED] [REDACTED] Psychiatric report was reviewed.

The psychiatrist provided the following history:

Claimant is a 43-year-old single, white female who came here accompanied by a friend. Claimant claimed to have herniated three discs in the spine in [REDACTED] while she was working as a drycleaner. Claimant said since then she cannot do things like she used to do. She claims to be feeling depressed for the last two years or so. She admits to having crying spells. Her sleep is poor. She had difficulty falling sleep and sustaining sleep. She is only able to sleep three hours or so. She feels tired and exhausted. She has very poor self esteem with feelings of helplessness. She denied any suicidal or homicidal feelings. She does not have any mood swings. She mostly feels depressed. She has no motivation to do anything. She is preoccupied with pain. She also complained of feeling nervous and anxious with sweating and palpitations. She strongly denied any history of alcohol or drug abuse or smoking.

* * *

Claimant has never been admitted to a psychiatric hospital. She was seen by a psychiatrist four years ago. She is currently not on any psychotropic medications and is not seeing a psychiatrist.

* * *

The psychiatrist provided the following DSM diagnoses:
Axis I—depression, NOS and consider dysthymic disorder;
Axis V/GAF—55.

The psychiatrist did not report any work limitations based on claimant's psychiatric condition.

- (b) A [REDACTED] [REDACTED] Internal Medicine consultative report was reviewed.

The physician provided the following history:

Claimant is a 43-year-old Caucasian female with a history of hypertension, asthma, chronic back pain, history of thoracolumbar disc disease and a history of gait abnormality. Claimant has been hypertensive for the last three years, requiring treatment. No current complaints of PMD, orthopenia, pedal edema, palpitations, chest pain or syncopal episodes. There are no other complaints of diabetes, MI, angina, CVA TIA, seizures, liver or kidney problems or asthma. She does complain of exertional dyspnea. She has no history of severe shortness of breath. She has smoked at least one pack a day for 25 years. She has been having asthma attacks for the last two-three years requiring treatment with Albuterol inhaler. She has been noted to have a nodule in her upper right lung as noted in her records, dated [REDACTED]. The nodule has not changed in appearance. Claimant has no symptoms of hemoptysis, fever, chills, but she does complain about a chronic smokers' cough but no severe hacking cough. No history of nocturnal wheezing and cough. She had no recent ER visits for acute asthma attacks. No history of hospitalization requiring ventilary assistance for asthma or pneumonia. She has undergone surgical excision of a tumor at the age of 23 at [REDACTED]. She required right-sided thoracotomy for removal of the tumor. She was doing well until about three years ago when she started having some lower thoracolumbar pain with muscle spasms. Currently, she is unable to stand up straight and walks with a forward droop because of pain in the thoracolumbar region. The pain radiates to the left side with tingling and numbness in the left lower limb. She

denies any urinary or stool incontinence. She does have a history of alcohol and drug abuse in the past. She is currently sober.

* * *

The physician provided the following impression:

- (1) Hypertension;
- (2) COPD;
- (3) Chronic thoracolumbar pain, possibly due to thoracolumbar disc disease with left side radiation;
- (4) Abnormal gait with forward fixed drooping;
- (5) Status post thoracotomy on the left side for removal of a benign tumor at age 23.

* * *

(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. The most recent psychiatric evidence (██████████) reports a DSM diagnosis of depression, NOS; considered dysthymic disorder. Axis V/GAF 55. The evidence did not support any significant work limitations due to claimant's psychiatric impairments.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for a required period of time. The most recent internal medicine evaluation (██████████) provided the following diagnoses: (1) hypertension; (2) COPD; (3) chronic thoracolumbar pain; (4) abnormal gait with forward flex drooping; (5) Status post thoracotomy. The internist did not report any significant work limitations based on claimant's physical impairments.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant 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 light/sedentary unskilled work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of Social Security Listings 1.02, 1.04, 4.04, 3.01.

The department denied claimant's application for disability benefits because claimant is able to perform unskilled substantial gainful activity.

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities....
20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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 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) otherwise are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The 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.

Claimant must establish that she has an impairment which is expected to result in death or last for at least 12 months which totally precludes all work activities. 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). Since the severity/duration requirement is a *de minimus* 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. The department evaluated claimant's disability using the following Listings: 1.02, 1.04, 4.04, 3.01. Claimant is not eligible under any of these 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 services provider under the auspices of the [REDACTED]. Claimant's work as a chore services provider was medium work.

Since SHRT has determined that claimant is able to do sedentary/light work, she is not able to return to her previous employment as a home help aide because that was heavier (medium) work.

Therefore, 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 her medical/psychiatric evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges that she is unable to work due to her feelings of depression. The psychiatric evidence of record ([REDACTED]) establishes the following psychiatric diagnoses: Axis 1 depression, NOS; considered dysthymic disorder and Axis V/GAF—55.

Second, claimant alleges disability based on her history of hypertension, asthma, chronic back pain and thoracolumbar disc disease, and gait abnormality. The most recent internal medicine report provides the following diagnoses: (1) hypertension; (2) COPD; (3) chronic thoracolumbar pain; (4) normal gait with forward fixed drooping; (5) status post thoracotomy.

During the hearing, claimant testified that a major impediment to her return to work was her back pain, secondary to back dysfunction. 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 the combination of her psychiatric and physical impairments. Claimant currently performs several activities of daily living, has an active social life with her live-in partner and has a valid driver's license. 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 work (SGA). In this capacity, she is able to work as a ticket taker at 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 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 the 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: March 27, 2009

Date Mailed: March 27, 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.

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cc:

