

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: 2008-28949
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 2009
Arenac 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 August 26, 2009, in Standish. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED]

[REDACTED].

The department was represented by Rick Joles (FIM).

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on August 31, 2009. Claimant waived the timeliness requirements so the new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge made the final 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/retro/SDA applicant (May 23, 2008) who was denied by SHRT (September 13, 2008) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. 20 CFR 416.920(c). The department also relied on the drug and alcohol prohibition per 20 CFR 416.935. Claimant requests retro MA for February, March and April 2008.

(2) Claimant's vocational factors are: age--47; education--high school diploma; post high school education--none; work experience--clerk/cashier/stocker at a camp store, home health aide, and odd jobs.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 1999 when she worked as clerk/stocker/cashier for a camp store.

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

- (a) Bipolar disorder;
- (b) Suicidal thoughts;
- (c) Narcolepsy;
- (d) Takes naps daily; and
- (e) Sleep deprivation issues.

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

OBJECTIVE MEDICAL EVIDENCE (September 3, 2008)

The department thinks that claimant has failed to establish an impairment which meets the department's severity and duration rules under 20 CFR 416.920(c). The department thinks that claimant is barred from MA-P/SDA benefits based on her drug and alcohol abuse under 20 CFR 416.935.

The department evaluated claimant's impairments using SSI Listings 12.04, 11.02, 11.03.

* * *

- (6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming (sometimes), laundry (no lifting), and grocery shopping. Claimant was not hospitalized in 2008 or 2009. Claimant does not use a cane, walker, wheelchair, or shower stool. She does not wear braces on her neck, arms or legs.

- (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 records are persuasive:

- (a) A June 18, 2008 psychiatric/psychological examination report (DHS-49D) was reviewed. The psychiatrist provided the following mental status examination: Displayed a depressed mood, constricted and blunted affect, and negative thinking. Did not display any evidence of paranoid or delusional thinking. Orientation, memory, concentration and judgment were grossly intact.

The psychiatrist provided the following diagnosis:

Axis I--Bipolar II Disorder, attention deficit hyperactivity disorder, alcohol dependence in partial remission.

Axis V--GAF--52.

- (b) A June 18, 2008 Mental Residual Functional Capacity Assessment was reviewed. The psychiatrist provided a diagnosis of marked limitations for the following mental activities:

- (6) The ability to maintain attention and concentration,
(11) The ability to complete a normal workday and workweek without interruptions.

The psychiatrist did not state the claimant was totally unable to work.

- (c) A [REDACTED] was reviewed.

The psychiatrist provided the following background:

Claimant reports she feels depressed and has panic attacks on a daily basis. She reports feeling depressed when she was a teenager and she was 'full blown alcoholic by the age of 15.' She reports sleep disturbances as well. Update: Claimant reports that she has been feeling very depressed since January when they terminated her rights for her children. She does have suicidal thoughts, but states she wouldn't do it and doesn't have the means. She reports that these thoughts are weekly or twice weekly. She is grieving the loss of the children. She reports a lot of anxiety, even going out of the house. She is not sleeping well and has nightmares. She also reports waking frequently, waking early and having a hard time falling asleep and then feels tired all day long. She has gained some weight after her recent incarceration, but she also stopped smoking. She sometimes thinks someone is calling her name. She admits that she has times where she feels happy during the day.

PSYCHIATRIC TREATMENT HISTORY:

Claimant has been in and out of substance abuse treatment, most recently last summer. She was also involved in some home-based services here at the [REDACTED] prior to beginning outpatient services. Claimant has not been consistent with therapy over the past six months. She is no longer involved in substance abuse treatment.

* * *

The psychiatrist provided the following diagnoses: Axis I major depressive disorder, recurrent, moderate; polysubstance dependence. Axis V/GAF--55. (Moderately limited).

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to preclude claimant from performing all customary work functions for the required period of time. Claimant reported the following impairments: Bipolar disorder, suicidal thoughts, and narcolepsy. The [REDACTED] psychiatrist provided the following diagnoses: Axis I--Bipolar II disorder, attention deficit hyperactivity disorder, alcohol dependence (in partial remission). The Axis V/GAF score is 52 (moderate). The psychiatrist did not state that claimant is totally unable to work; she does have difficulty with maintaining attention and concentration as well as the ability to complete a normal workday and workweek without interruptions. The psychiatrist did not state that claimant was totally unable to work due to her mental 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 the required period of time. Claimant reported the following physical impairments: Ruptured disc in the neck, seizures, the need to take naps daily, and sleep deprivation issues. Claimant did not provide a DHS-49 to establish her physical residual functional capacity. The medical records do not establish any severe functional limitations arising out of her physical impairments.

(11) Claimant formerly received social disability benefits (SSI). She subsequently lost her SSI benefits. Claimant recently applied to re-establish her SSI benefits. However, SSA recently denied claimant's recent SSI application.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant is not eligible for MA-P/SDA benefits because she has not established an impairment which meets the department's severity and duration requirements. Furthermore, claimant is barred from receiving MA-P/SDA benefits due to her drug and alcohol abuse under 20 CFR 416.935.

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 does 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 decides eligibility based on mental impairments 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, 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).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for purposes of the MA-P/SDA programs. 20 CFR 416.927(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 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 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 existed, or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the 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 that profoundly limit her physical/mental ability to do basic work activities, if she does not meet the Step 2 criteria.

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

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

SHRT evaluated claimant's impairments using SSI Listings 12.01, 11.02 and 11.03. Claimant does not meet any of the applicable SSI Listings.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a clerk/stocker/cashier for a camp store.

Claimant's work at the camp store was light work. Also, claimant was required to meet and assist customers and to assist them with their purchases.

Although claimant alleges that she is unable to work based on her mental impairments (bipolar disorder, suicidal thoughts, and narcolepsy and sleep deprivation purposes), the medical records provided by the [REDACTED] psychiatrist do not report any overriding functional limitations that would impair claimant's ability to perform her previous work as a clerk/stocker/cashier at a camp store. The [REDACTED] record show a GAF score of 52 (moderate symptoms).

Therefore, claimant has not met a burden of proof to establish that she is unable to return to her previous work.

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 a mental impairment based on a combination of mental impairments: Bipolar disorder, suicidal thoughts, narcolepsy, and sleep deprivation issues. Claimant's psychiatrist reported that claimant is markedly limited in her ability to maintain attention and concentration for extended periods as well as the ability to complete a normal work day and workweek without interruptions. However, the [REDACTED] psychiatrist did not state that claimant was totally unable to work based on her mental impairments.

Second, claimant alleges disability based on a combination of physical impairments: ruptured disc, seizures and sleep deprivation issues. Claimant did not provide a DHS-49 to establish her physical residual functional capacity.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Currently, claimant performs an extensive list of activities of daily living, has an active social life with her roommate.

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 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, using 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: April 19, 2010

Date Mailed: April 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 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/tg

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cc:

