

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: 2008-30735
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2009
Alpena County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on January 27, 2009, in Alpena. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Betty Valley (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on February 2, 2009. After SHRT's second disability denial, the ALJ 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)?
- (2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (May 28, 2008) who was denied by SHRT (September 22, 2008) due to claimant's ability to perform her past work as a cashier.

(2) Claimant's vocational factors are: age—49; education—high school diploma; post high school education—none; work experience—worked as an adult foster care worker at [REDACTED] and at [REDACTED]; also worked as a cashier for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since February 2007 when she was an adult foster care provider for [REDACTED].

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

- (a) Hypertension;
- (b) Metabolic syndrome;
- (c) Morbid obesity;
- (d) Chronic ongoing tobacco abuse;
- (e) Ex-polysubstance abuse;
- (f) Asthma;
- (g) Degenerative disc disease of the lumbar spine;
- (h) Depression;
- (i) Anxiety;
- (j) Hepatitis C;
- (k) Possible bipolar affective disorder;
- (l) Dyslipidemia;
- (m) Positive for rheumatoid factor with bilateral widespread arthralgias;
- (n) Suspicious for rheumatoid arthritis;
- (o) Coronary artery disease.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

SHRT decided that claimant is capable of performing past work as a cashier. SHRT evaluated claimant's eligibility using SSI Listings 4.02, 4.04, 12.04 and 14.09. SHRT decided claimant does not meet any of these listings.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning (sometimes), mopping, vacuuming (kids help out), laundry and grocery shopping. Claimant uses a cane approximately once a month. She uses a shower stool 15 times a month. She wears braces on both hands in the evening on a daily basis. Claimant received inpatient hospital services in [REDACTED] for coronary artery disease. She had stents placed in [REDACTED]. Claimant did not have any inpatient hospital services in 2009.

(7) Claimant does not have a valid driver's license and does not drive an automobile. Her boyfriend provides her with taxi service. Claimant is not computer literate. Claimant attends school activities in which her three grandchildren are participating.

(8) The following medical records are persuasive:

(a) A [REDACTED] Medical Examination Report (DHS-49) was reviewed.

The family physician had the following diagnoses:

- (1) Morbid obesity;
- (2) Depression;
- (3) Coronary artery disease;
- (4) Hepatitis C;
- (5) Severe sleep apnea;
- (6) Airway dysfunction;
- (7) Tobacco abuse;
- (8) Bipolar disorder;
- (9) Metabolic syndrome;
- (10) Suspected RA;
- (11) Hypertension;
- (12) Hyperlipidemia;

The family physician reports the following limitations:

Claimant is able to lift ten pounds occasionally. She is able to sit and walk less than two hours in an eight-hour day. She is able to stand and walk less than two hours in an eight-hour day. She is able to sit less than six hours in an eight-hour day. She has normal use of her hands/arms and normal use of her feet.

The family practitioner reported the following mental limitations:

The claimant has some short-term memory loss.

- (b) An [REDACTED] Medical Examination Report (DHS-49) was reviewed.

Claimant's family physician provided the following information:

The physician provided the following diagnoses: See diagnoses in Paragraph (a) above. The physician provided the following work limitations: claimant is not able to lift any weight. Claimant is able to stand/walk less than two hours in an eight-hour day. She is able to sit less than six hours in an eight-hour day. She is not able to do any grasping, reaching, pushing, pulling or manipulating with her hands/arms, and she is totally unable to use foot controls. The family physician states that claimant has no mental limitations.

- (c) In [REDACTED], [REDACTED] was reviewed.

- (d) The psychiatrist provided the following:

Patient reports she has been feeling depressed dealing with the loss of close family members. Apparently, her brother-in-law committed suicide recently, her uncle who was more like her father figure died very recently and she is having difficulty dealing with the above losses. She also reports she had a long history of depression, panic attacks, mood swing problems, she cries often, she has poor sleep patterns, her appetite is variable, sometimes she will binge eat and other times not eat much at all. She has gained approximately 100 pounds in the last year or so. She feels hopeless. She has problems with memory and concentration. She denies suicidal thoughts.

* * *

Further, she states that she has had manic episodes outside of the context of substance abuse, which she does admit she's used crack on and off in the past. She states she had periods when she had poor sleep, but no need for it, racing thoughts, pressured speaking, increased productivity, impulsiveness, grandiosity, etc. She denies any history of psychosis. She does admit that she is quite paranoid a lot, that someone is out to get her. She does admit this could be related to the trauma she's endured in the past.

As far as substance abuse issues, she states that her drug of choice is crack cocaine. Her last use was about a year ago. She states she slipped. Prior to that, she did not use for at least another year or so. She does have a history of shooting up cocaine. She does have Hepatitis C. She states her brother is a large factor for her substance abuse problems.

The psychiatrist provided the following impressions:

Claimant is a 48-year old Caucasian female who has a long history of trauma and more than likely has post traumatic stress disorder. This more likely made her more vulnerable to bipolar disorder. She is endorsing symptoms consistent with bipolar disorder. Currently, I would assess her as mildly hypomanic. She also has panic attacks, probably as part of her bipolar disorder. She has a history of substance abuse, particularly crack cocaine which is now in remission. She has chronic stress about financial problems, but otherwise seems to be in a very calm point in her life. She is medication adherent, but probably would need a higher dose of a mood stabilizer, in my opinion.

DSM-IV diagnoses:

Axis I

- . Chronic posttraumatic stress disorder;
bipolar disorder, currently hypomanic;
cocaine abuse, in early remission.

Axis V/GAF—47.

(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 medical records show that claimant was never psychiatrically

hospitalized. The medical records show that claimant has a history of cocaine abuse. Claimant reports that she is currently in remission. The [REDACTED] psychiatric assessment provides the following diagnoses: chronic posttraumatic stress syndrome, bipolar disorder, crack cocaine abuse in early remission. Axis V/GAF—47. Taking the psychiatric report as a whole, the record does not establish that claimant is totally unable to work based on her mental impairments, at this time.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The Medical Examination Report ([REDACTED]) reports the following diagnoses: long-term history of morbid obesity, bipolar disorder, chronic antisocial impairment; coronary artery disease (two stents inserted). Bipolar disorder, rheumatoid arthritis, metabolic syndrome, hypertension, Hepatitis C, asthma, and tobacco abuse. Claimant's family physician did not report that claimant is totally unable to work in his [REDACTED] Medical Examination Report.

(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 benefits based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform her past work as a cashier.

The department evaluated claimant's impairments using SSI Listings 4.02, 4.04, 12.04 and 14.09.

The department denied claimant's MA application because she is able to perform light work.

LEGAL BASIS

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).

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).

To determine to what degree claimant's alleged mental impairments limit her ability to do basic work activities, the following regulations must be considered.

(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 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).

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 purposes. PEM 260. "Disability," as defined by MA-P 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.

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 vocational evidence of record shows that claimant is not 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, has existed for at least 12 months, until it prevents all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P, 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* 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, SHRT evaluated claimant's eligibility based on SSI Listings 4.02, 4.04, 12.04 and 14.09. Claimant does not meet any of the Listings considered. Therefore, the 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 provider at an adult foster care home. This was heavy work.

The medical evidence of record establishes that claimant has coronary artery disease (CAD), polysubstance abuse, degenerative disc disease of the lumbar spine, depression, anxiety, Hepatitis C, possible bipolar disorder, dyslipidemia and wide spread arthralgias suspicious for rheumatoid arthritis. Because of claimant's lumbar spine/disc disease, she is not able to do the heavy lifting required of her previous work as a direct care provider at an adult foster care facility.

STEP #5

The issue at Step 5 is whether claimant has a Residual Functional Capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/psychiatric evidence of record, that her combined impairments meet the department's definition of disability for MA-P purposes.

First, the claimant alleges disability based on a combination of mental impairments: depression, panic attacks, mood swings, bipolar disorder. A recent [REDACTED] psychiatric report provides the following diagnosis: chronic posttraumatic stress disorder, bipolar disorder, crack cocaine abuse, Axis V/GAF—47. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity. Taking the psychiatric record

as a whole, claimant has not established a severe mental impairment that precludes all work activities.

Second, claimant alleges disability based on the lumbar spine disorder, Hepatitis C, arthralgias suspicious for rheumatoid arthritis and coronary artery disease, and the placement of two coronary stents in [REDACTED]. The medical evidence of record precludes claimant from returning to her previous work as a direct care provider at an adult foster home. However, claimant's physical impairments do not preclude all employment.

Finally, claimant testified that a major impediment to her return to work was her back pain. Claimant uses a cane occasionally, and wears braces on her hands on a daily basis during the night. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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 spine and hand dysfunction as well as radiating pain. Claimant currently performs many activities of daily living, has an active social life with her three grandchildren and her boyfriend and represented herself confidently at the hearing.

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 physically able to work as a ticket taker at a theater, as a parking lot attendant, as a greeter for [REDACTED] and as a telemarketing representative.

Based on this analysis, the department correctly denied claimant's MA-P application based on Step 5 of the sequential analysis, as presented above.

Since claimant is not disabled for MA purposes in Step 5, the Administrative Law Judge does not need to decide whether claimant's substance abuse history is material to her MA-P application.

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 disability requirements under PEM 260.

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: March 30, 2009

Date Mailed: March 30, 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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