

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: 2008-16353
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 4, 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 Inkster on September 4, 2008. Claimant personally appeared and testified under oath.

The department was represented by Marietha Allman (Medical Contact Specialist).

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 (October 25, 2007) who was denied by SHRT (May 17, 2008) due to claimant's ability to perform simple, unskilled medium work.

SHRT relied on Med-Voc Rule 203.18, as a guide.

(2) Claimant's vocational factors are: age--53; education--11th grade, post-high school education--none; work experience--cashier and dining room assistant for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2006 when she was a cashier and dining room assistant for Taco Bell/KFC.

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

- (a) Severe neck pain;
- (b) Severe back pain;
- (c) Bipolar disorder;
- (d) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (May 19, 2008)

A Mental Status Exam in 2/2007 showed claimant's speech was clear, logical, and fairly spontaneous. She reported that she hears voices calling her name, but denied any other hallucinations. She was moderately depressed (page 15). Diagnosis at the time included major depressive disorder, recurrent, moderate and alcohol dependence in sustained, partial remission (page 16).

A physical exam, dated 3/2007, showed claimant was 5' 5" tall and 135 pounds. She had tenderness in the cervical and L/S spine. There was no spasm noted (page 6). Claimant's grip strength was 5/5 bilaterally. Muscle strength in both upper and lower extremities was 5/5. Deep tendon reflexes were intact. Sensory exam was intact (page 7).

An FIA-49 form, dated 10/2007, showed claimant appeared depressed. There were no other pertinent abnormal findings given (page 41). The doctor indicated claimant could occasionally lift 6-10 pounds and could stand 2 hours, walk 1 hour, and sit 2 hours. She also had mental limitations (page 42).

Another FIA-49 form, dated 1/2007, showed that claimant had limited Range of Motion (ROM) of the neck and tenderness in the left elbow. There were no other pertinent abnormal findings (page 30). The doctor indicated claimant could never lift any weight and could only stand and walk 1 hour each and sit 2 hours. The doctor also indicated there were mental limitations (page 31).

ANALYSIS: Claimant has pain without significant neurological abnormalities. There was no muscle spasm noted. Claimant can walk without assistance, and had full grip. Claimant has a history of alcohol abuse and depression. However, she was spontaneous, clear and logical. Claimant's treating physician has given less than sedentary work restrictions based on claimant's physical impairments. However, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), it will not be given controlling weight. The collective objective medical evidence shows that claimant is capable of performing simple, unskilled medium work.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear a brace on her neck, arms, or her legs. Claimant was hospitalized in 2008 at the [REDACTED]. The discharge diagnosis was attempted suicide.

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

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

(a) A March 26, 2007 psychiatrist narrative was reviewed.

The physiatrist provided the following history:

The patient's history dates back to 1990 when she developed very bad neck and back pain after an automobile accident. She was hospitalized for 1 1/2 hours. She had no insurance coverage and was told to follow up with her own physician after she was given emergency treatment. She wore a neck brace for a few months and then stopped wearing it. Her problems have been getting worse and worse. Her family doctor told her that she has bad arthritis in the neck and back but no x-rays have been done. She is not currently on any medical treatment.

Presently, she states she has very sharp, constant back pain which radiates down to both hips and legs. She also states that she has very sharp, severe, constant neck pain which is of a non-radiating nature. There is accompanying stiffness in the neck and back. She admits to numbness, tingling in the entire neck and partially in the back, but not in the extremities. She admits to weakness in the hands and legs.

* * *

The physiatrist provided the following functional evaluation:

Patient can dress, undress, and get on and off the table without difficulty.

CLINICAL IMPRESSION:

(1) History of auto accident resulting in neck and back injuries, diagnosed with possible cervical and lumbosacral spondylosis. Now the patient presents with chronic non-radicular neck pain and chronic radicular back pain.

(b) A [REDACTED] [REDACTED] was reviewed.

The psychiatrist provided the following history:

This is a 51-year-old, Caucasian female who states 'I am just depressed all the time.' Claimant states that she was taking care of her father who had cancer. Her father died in 1998. She stated that she has been feeling depressed on and off since 1998, but recently she has been feeling depressed every day. She stated that when she is depressed, she does not feel

like doing anything. She a lot for no reason and has never attempted suicide. She stays at home and does not go out. She feels tired and exhausted and does not feel like doing anything. She does not socialize much with people. Her concentration is poor. She lost interest in doing anything and has anhedonia. She gets irritable and frustrated easily. At times, she argues, but denies any physical aggression towards others. She is not working at the present time. She is not sleeping well. Her appetite is fair. Her weight is stable.

* * *

PERSONAL HISTORY:

Claimant has worked for 20 years in her life and last worked in a fast food restaurant.

* * *

The psychiatrist provided the following diagnoses:

AXIS I--Major depression, recurrent type, in partial remission;

AXIS V/GAF--50.

Claimant is able to manage her financial affairs.

(c) A [REDACTED] report was reviewed.

The psychiatrist provided the following history:

Claimant said she is applying due to 'severe depression.' She has pain in her elbows, back, and neck. 'I was in two bad car accidents in 1990 and 1994.' She feels she has developed arthritis. She has been treated for depression since 1998. She lost interest in everything now. She has sleep problems. There are days that she will not shower; she used to shower daily, but now only 1 to 2 times a week, if she goes somewhere. Her mother visits her daily. Her depression has been severe since 1990. Her father died in 1998. She had been his primary caregiver at home for 2 months before he died of cancer. She will cry easily.

She has no history of psychiatric hospitalization. She had no mental health treatment between 2001 and late 2006, since she had no insurance.

* * *

She has done factory and waitress work. She was fired in October 2006 and has not been able to get unemployment. She had worked there for 3 1/2 years. Her employer says she quit, so she is not getting any unemployment. She usually kept jobs for 3 to 4 years.

* * *

The psychiatrist provided the following daily functioning summary:

Claimant gets food stamps and lives in subsidized housing. She will take her dog for walks. She will watch TV and eat and play with her dog. She will usually cook or her mother may cook for both of them. She may go to the store or visit her mother. She does her own housework and laundry. Her mother reminds her to pay her bills. She can partially meet her basic needs.

* * *

The psychiatrist provided the following diagnoses:

AXIS I--Major depressive disorder; recurrent, moderate; alcohol dependence in sustained, partial remission.

AXIS V/GAF--55.

* * *

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she has depression and bipolar disorder. The most recent psychiatric diagnosis shows: Major depression, recurrent type in partial remission and a GAF of 50. The psychiatric medical records show that claimant has struggled with depression and lack of interest in daily activities. However, the psychiatric evidence, in combination with claimant's testimony, do not show a severe impairment that totally prevents claimant from doing any work-related activities. 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. Claimant testified that she is totally unable to work because of chronic/severe neck and back pain. A recent physiatrist report shows that claimant has possible cervical and lumbosacral spondylosis. However, the medical reports do not clearly indicate that claimant's neck and back impairments totally preclude all work activity.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant did not 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 (RFC) to perform unskilled medium 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 does not meet the MA-P disability standards based on her vocational profile [closely approaching advanced age (52), less than high school education and a history of unskilled work], based on Med-Voc Rule 203.18 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 or more.

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 MA-P eligibility based on mental illness 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).

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 is not currently performing SGA.

Therefore, claimant meets the Step 1 disability test.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c).

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.

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 cashier and dining room assistant for [REDACTED]. Claimant's [REDACTED] job was light unskilled work. There is no probative medical evidence in this record to establish that claimant is not able to return to her previous work as a cashier and dining room assistant.

Since claimant is able to return to her previous work, she does not meet the Step 4 disability test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. Claimant has the burden of proof to show by the medical/psychological evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on a bipolar disorder and depression. While there is evidence of a bipolar disorder in the psychiatric records, there is no evidence that this impairment is so severe that claimant is totally unable to work. Since claimant did not submit a DHS-49D or a DHS-49E, it is impossible to know precisely what her mental residual functional capacity is at this time. Claimant does not meet the MA-P/SDA disability standards based on her mental impairments.

Second, claimant alleges disability based on back/neck dysfunction and radiating pain. There is evidence of back/neck dysfunction in the medical records. However, the physicians who examined claimant do not clearly state that she is totally unable to work due to these impairments. Claimant does not meet the MA-P/SDA disability requirements based on her physical impairments.

During the hearing, claimant testified that a major impediment to her return to work was her back and neck pain secondary to her back and neck 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 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 back/neck dysfunction in combination with her bipolar disorder and depression. To the contrary, claimant currently performs many activities of daily living and has an active social life with her mother. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled work (SGA). In this capacity, she is able to work as a ticket taker for a theatre, 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 claimant's MA-P/SDA application is, hereby, AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 7, 2010

Date Mailed: January 7, 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 mailing date of the rehearing decision.

JWS/cv

cc:

