

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: 2008-18203
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 15, 2008
Bay 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 in Essexville on July 15, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED]

The department was represented by Todd Belski (FIM).

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 July 16, 2008. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, 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)?

(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 (February 5, 2008) who was denied by the State Hearing Review Team (SHRT) (June 11, 2008 and July 21, 2008) due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.12, as a guide. Claimant requests retro-MA for November and December 2007 and January 2008.

(2) Claimant's vocational factors are: age—50; education—11th grade; post-high school education—completed coursework to be a certified nurse assistant; work experience—certified nurse assistant, bartender and home health aide.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) as a certified nurse assistant for a long-term care facility. Claimant works 30 hours a week and earns \$10.90 per hour. Her bi-weekly gross paycheck is \$665. Her gross monthly income is \$1,310.

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

- (a) Depression;
- (b) Back dysfunction with pain;
- (c) Status post suicide attempt 2x (2007);
- (d) Status post suicide attempt (2008);
- (e) Does not like to associate with others;
- (f) Panic attacks.

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

OBJECTIVE MEDICAL EVIDENCE (JUNE 11, 2008):

On 10/2006 claimant was hospitalized due to major depression, recurrent, severe, marijuana abuse and rule-out history of alcohol abuse. Upon discharge, claimant denied suicidal or homicidal

ideations, planned or intent. Insight and judgment had improved significantly.

On 1/2008, claimant was hospitalized due to major depression, and she ran out of her medications. Claimant received treatment and upon discharge, claimant was not suicidal or homicidal and could give a strong contract for safety.

ANALYSIS:

Claimant has been diagnosed with depression. However, there was no evidence of any significant mental limitations that would preclude unskilled work.

(6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing and laundry. Claimant does not use a cane, walker or wheelchair. She does occasionally use a shower stool. She does not wear a brace on neck, arms or legs. Claimant uses marijuana on a regular basis, approximately 30 times a month.

(7) Claimant has a valid driver's license and drives her automobile to work, 20 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) See the SHRT summary of medical evidence at paragraph #5, above.

(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. The psychiatric records do show the following diagnoses: Major depression, recurrent, severe; marijuana abuse; rule-out alcohol abuse. Claimant attempted suicide twice in 2007 and once in 2008.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the

required period of time. The medical/vocational records do show the following exertional impairments: MRI of the lumbar spine (March 3, 2008)/impression moderate to advanced degenerative disc disease at the L5-S1 level.

(11) Claimant has not applied for Social Security benefits.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P 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 normal work functions.

The department thinks that claimant has a severe mental impairment; however her impairment does not meet or equal a Social Security Listing.

The department denied MA-P based on claimant's vocational profile [closely approaching advanced age, 11th grade education and work experience as a certified nurse assistant]. Based on Med-Voc Rule 203.12, the department denied MA-P/retro eligibility.

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).

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).

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 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.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimant's who are working and 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 currently performing SGA as a certified nurse assistant for a long-term care facility. She earns \$1,310/mo., gross.

Therefore, claimant does not meet the Step 1 eligibility 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, 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 limits her physical/mental ability to do basic work activities, she does not meet the Step 2 disability criteria.

SHRT found that claimant meets the severity and duration requirements. The Administrative Law Judge disagrees. Since claimant is performing substantial gainful activity as a certified nurse assistant, the record, as a whole, does not show a severe impairment with a 12 month duration.

Claimant does not meet the Step 2 eligibility 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 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Since claimant is currently employed as a certified nurse assistant for a long-term care facility, earning approximately \$1,310 a month, the Administrative Law Judge concludes she is able to perform her previous work.

Because claimant is currently employed, she does not meet Step 4 eligibility 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/psychiatric evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges that she is unable to work due to her psychological/mental health issues. Claimant has been diagnosed with severe depression and she has been hospitalized 3 times in 2007 and 2008 combined.

Second, claimant alleges that she is disabled due to back dysfunction with pain. However, the medical records do not establish that her back impairment is totally severe. The fact that claimant is able to work 30 hours a week on a regular basis and has done so for the past 4 years, rebuts claimant's allegations that she has a severe impairment that totally prevents her from working. To the contrary, the medical/vocational evidence of record shows that claimant is able to perform normal work activities since she works 30 hours a week as a certified medical assistant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decidesthe claimant does not meet the MA-P disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby,
AFFIRMED.

SO ORDERED

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

Date Signed: August 30, 2009

Date Mailed: August 31, 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.

2008-18203/JWS

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/sd

cc:

