

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: 2008-21304
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 4, 2008
Kent 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 Grand Rapids on September 4, 2008. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on September 4, 2008. Claimant waived the timeliness requirement so that her 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 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 (March 14, 2008) who was denied by SHRT (July 1, 2008) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age—40; education—high school diploma; post-high school education—an [REDACTED]; a [REDACTED]; work experience—assembly line packer , parts inspector, crew person/cashier at [REDACTED], teacher's aide at an early education center.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since July 2008 when she worked as an assembly line packer.

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

- (a) Bipolar disorder;
- (b) Status-post left foot (bunion) surgery (October 2007);
- (c) Status-post right foot (bunion) surgery (January 2008).

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

OBJECTIVE MEDICAL EVIDENCE (JULY 1, 2008):

Medication review note of 3/11/2008 reported a diagnosis of bipolar, mixed in partial remission with an estimated GAF of 50. She was noted to have poor insight and judgment with a history of poor impulse control and relationship problems (page 18).

ANALYSIS:

Due to her mental impairment, she may have difficulty performing skilled work on a sustained basis. However, she should be capable of performing a wide range of unskilled work.

Medical opinion was considered in light of CFR 416.927.

The evidence in the file does not demonstrate any other impairment that would pose a significant limitation.

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning (sometimes), mopping, vacuuming, and grocery shopping (needs help). Claimant was not hospitalized as an inpatient in 2007 or 2008. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces on her neck, arms or legs.

(7) Claimant has a valid driver's license and drives an automobile approximately 8 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) An [REDACTED] was reviewed.

The psychiatrist provided the following mental status examination:

Claimant is a well-developed, well-nourished, over weight, short, white female. She appears her age of 39. She presents herself as less intense and less labile in her affect. She continues to worry and is constantly seeking reassurance. She has to be redirected on her priorities, like working on anger management and relationship issues. She was seen with her sister, who is very supportive and states that she has started to notice some improvement on her current medications. Insight and judgment are fair.

The psychiatrist provided the following assessment/diagnoses:

Bipolar disorder, mixed, in remission; Axis IV/GAF—58.

- (b) A [REDACTED] was reviewed.

The psychiatrist provided the following mental status examination:

Claimant is a well-developed, well-nourished, overweight white female who appears her stated age of 39. She was seen with her sister who is advocating for her due to some communication problems when she gets upset. Her memory and concentration are grossly intact. She is oriented to time, place, and person. There is no evidence of hallucinations or paranoid ideation. She expresses a great deal of frustration about how long it took her to get into see me. She used to be my patient when she was working and could afford the medications.

Memory and concentration are grossly intact. She is oriented as to time, place and person. There are no suicidal or homicidal thoughts. Insight and judgment are poor. She has a history of poor impulse control and relationship problems.

The psychiatrist provided the following assessment/diagnosis:

Bipolar disorder, mixed, in partial remission; Axis IV/GAF—50.

- (c) A [REDACTED] was reviewed. The [REDACTED] psychologist provided the following summary of claimant's behavioral health and mental status:

Claimant presented with appropriate affect and activity with some anxiety regarding her previous therapist giving her a bipolar diagnosis. Claimant no longer has a job (insurance) and could not afford to pay her other therapist. She does not recall the therapist's name. Claimant had organized thought process and normal thought content. She expressed some embarrassment feelings about being

diagnosed with bipolar. Claimant acknowledged being depressed for years “with a little OCD” (Obsessive Compulsive Disorder). She reports an incident of “flipping-out” at a senior athletic awards banquet. She went on the gym floor and said she felt out of control and was doing cartwheels and dancing around. Claimant insisted that her therapist pick-up the paper clip off the floor because she was getting anxious about being unable to pick it up herself. In December 2007, she had bunion surgery on her left foot and the cast wouldn’t allow her to bend her leg. Claimant reports being lonely and desires to be married. She stated she started calling a man from church too much (8-10 times/day) and he told her not to call again. They had gone on a date once. Claimant reports 3 sisters also have depression. Claimant lived with her parents until her father passed away (2003), then she decided to live independently.

The MA psychologist provided the following social screening:

Claimant described in a very “tiny” house about 2 blocks from her mother. Sometimes claimant thinks about asking her mom can she move back home. Claimant says she keeps losing jobs due to the bad quality of her work and inability to concentrate for long periods of time. She has a [REDACTED]. Claimant has been a teacher’s aide (para-pro) and substitute teacher. She got fired from her educational positions because a teacher did not like her, criticized her work as she couldn’t follow directions. Claimant never pursued a teaching license. She has a car and a driver’s license.

The MA psychologist reported the following medical/health screening:

Claimant is requesting a psychological evaluation because she doesn’t “quite” believe she has bipolar. [REDACTED] has prescribed Wellbutrin and Abilify medications. Claimant wants to check with [REDACTED] to see if her doctor is giving her the right medication. [REDACTED] is claimant’s primary care physician.

The MA psychologist provided the following diagnostic impressions:

Axis I—Bipolar disorder, NOS; Axis V/GAF—60.

(9) The probative medical evidence does not establish an acute mental (non-exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she had been diagnosed with bipolar disorder. The reports from [REDACTED] confirm the diagnosis of bipolar disorder but state that the condition is in remission. The most recent reports (April 29 and March 11, 2008) both state that claimant's bipolar disorder is in remission. In addition, the Axis IV/GAF scores (58, 50 and 60 respectively) show that claimant is perfectly capable of working. Also, claimant did not provide a DHS-49 or a DHS-49E to show her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute physical (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's bunions are not a severe impairment. Furthermore, claimant's testimony shows that she is able to perform simple, unskilled sedentary work, at least on a part time basis.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform simple, unskilled sedentary work.

The department thinks that claimant impairments do not meet/equal the intent or severity of a Social Security Listing.

Based on claimant's vocational profile [younger individual (age 40), with a high school education and an Associates Degree and a Bachelor's degree and a history of semi skilled work], that claimant does not meet the severity and duration requirements of PEM 260 and 261.

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 mental illness as a basis for disability 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, histories 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).

(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. Claimant's 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 disability criteria.

Claimant's bilateral bunion surgery does not meet the requirements for a severe impairment. Furthermore, claimant's diagnosis of bipolar disorder, in remission, does not meet

the department's severity and duration requirements. Claimant does not meet 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 inspector at a plastics factory. She also worked as a packer on an assembly line.

Claimant stated at the hearing that she was unable to continue working because her feet hurt. There is no medical evidence in the record to establish a severe impairment regarding claimant's feet. The medical evidence indicates that claimant can return to her previous work as an inspector/packer on an assembly line.

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 bipolar disorder. While there is evidence in the record that claimant has been diagnosed with bipolar disorder, the recent evaluations state that claimant's bipolar is in remission. Since claimant did not submit a DHS-49D or a DHS-49E to

establish her mental residual functional capacity, the Administrative Law Judge concludes that claimant's bipolar disorder/in remission is not of sufficient severity and duration to totally preclude substantial gainful activity.

Second, claimant alleges disability based on foot pain secondary to bilateral bunion surgery. There is little medical evidence regarding claimant's foot pain. During the hearing, claimant testified that a major impediment to her return to work was her inability to stand for long periods due to her foot pain. 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 bipolar disorder (in remission) and her foot pain due to recent bunion surgery. Claimant currently performs numerous Activities of Daily Living, has an active social life with her sisters. Claimant drives an automobile eight times a month; claimant is computer literate. 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, claimant is able to work as a ticker taker at a theatre, as a parking lot attendant and as a greeter at [REDACTED].

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 the 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: October 15, 2009

Date Mailed: October 15, 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.

JWS/sd

cc:

