

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: 2008-18792
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 2, 2008
Montcalm 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 Stanton on October 2, 2008. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Rick Stilson (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to SHRT for a second review (October 6, 2008). Claimant waived the timeliness requirements so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial (October 7, 2008), the Administrative Law Judge 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 (January 17, 2008) who was denied by SHRT (June 10, 2008) due to claimant's ability to perform her past unskilled light work.

Claimant requests Retro MA for October, November and December 2007.

(2) Claimant vocational factors are: age—61; education—12th grade; post high school education—attended cosmetology school and was certified in 1964; work experience—potato grater, dishwasher, cosmetologist (20 years).

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

- (a) Bipolar disorder;
- (b) Arthritis in knees;
- (c) Hypertension;
- (d) Gastroesophageal reflux disease (GERD);
- (e) Urinary incontinence;
- (f) Shingles in past;
- (g) Carpal tunnel surgery;
- (h) Cyst removed on her right foot;
- (i) Status post appendectomy, tonsils and adenoid removal;
- (j) Status post tubule ligation.

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

OBJECTIVE MEDICAL EVIDENCE (June 10, 2008)

Mental health treatment notes (4/2006 to 7/2007) indicate claimant was treated for sometime for mood disorder, anxiety disorder and cannabis abuse. Her apparel and hygiene were appropriate. Her speech was within normal limits—occasionally minimally pressured. Her insight and judgment were usually fair. She was alert and oriented. She was noted to impulsive and to be moody at times (page 113-123).

Treating physician notes of 10/2006 to 1/2008 indicate claimant was treated for a variety of routine physical problems (upper respiratory infection, high blood pressure, etc.) and occasional anger (page 20-13).

ANALYSIS: Evidence in the file does not demonstrate a physical condition that would pose significant limitations.

Claimant's medical condition would likely make skilled work difficult, however, she should be capable of performing a wide range of unskilled work.

Medical opinion was considered in light of CFR 416.927.

Evidence in the file does not demonstrate any other impairments that would pose a significant limitation on claimant's ability to work.

(5) Claimant lives alone in a trailer parked in the backyard of her friend. She performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant uses a cane approximately twice in a 30-day period. She does not use a walker, a wheelchair or a shower stool. Claimant wears braces approximately 10 days during a 30-day period. Claimant was not hospitalized in 2007 or 2008.

(6) Claimant has a valid driver's license and drives an automobile approximately 10 times a month. Claimant is not computer literate.

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

(a) An [REDACTED] psychiatric medication review was reviewed.

The psychiatrist provided the following interim history and observation:

Patient reports overall she continues to feel she is doing well. States her mood is "good." Admits to some racing thoughts, but overall much better than when we first started. Her sleep is "better." She goes to bed at 9:30 and

falls asleep at 10:30, wakes up a couple of times and gets up around 9 or 10 the next day. Anxiety is under good control. No significant symptoms at this point. Denies any psychotic symptoms. Denies any drug use. Some upsetting news. Her grandson who was in Iraq, his humvee was hit by a roadside bomb. Sustained some injuries and now is in Germany. He will be okay. Apparently one of the troops did lose his life during that.

Treatment response and the side effects and adherence:

As above, she is taking her medications. Denies any side effects. Denies any drug use.

Mental status examination:

Claimant is a 61-year-old white female who looks about her stated age. She has short dark hair with some graying. She has appropriately applied makeup, some earrings on as well as rings on her fingers. She is casually dressed in a sweatshirt, jeans and sandals. Her overall grooming and hygiene are good. She makes good eye contact and is pleasant and cooperative throughout the interview. There is less psychomotor agitation than noted previously. She continues to be somewhat abundant, but interruptible. Her mood is euthymic. Her affect was fairly broad and appropriate. Thoughts were organized. She denies any auditory or visual hallucinations, delusions of references, thought broadcasting, mind reading or paranoia. She also denies any suicidal or homicidal ideation. No thoughts that life isn't worth living. She is clearly future oriented. She has adequate insight and judgment. Attention and memory are grossly intact, although she does complain of some memory problems, and this was not formerly tested.

The psychiatrist provided the following DSM diagnosis: Axis I—Bipolar disorder, mixed, moderate, much improved; anxiety disorder NOS (some GAD symptoms and some recent addictive behaviors (nicotine dependence; cannabis abuse; alcohol abuse, rule out dependence; rule out multiple drug dependence (been to detox for opiates, soma and benzodiazepines in the past, as well as alcohol).

Axis V—no information.

(b) An [REDACTED]
[REDACTED]/progress note was reviewed.

The MA social worker provided the following description of observations: met with claimant in her trailer at her appointed time. Claimant reports significant stress over the weekend with events in her life including daughter's divorce, relationship with husband, mood of man she is living with and planning to return to work.

Progress toward goal: claimant was able to process this stress as it relates to herself, ability to keep self safe, and future orientation to positive events. Claimant will be going to apply for an apartment tomorrow, **looking forward to work in the potato fields in a week or two**, being about to apply for Social Security in October when she turns 62. Claimant is also waiting to hear results regarding disability. Claimant is future oriented, planning her life one day at a time and looking forward toward positive change. Claimant reports no substance use and taking medications as prescribed.

(8) 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 bipolar disorder. However, the medical evidence of record shows the following diagnoses: bipolar disorder; anxiety disorder, NOS; nicotine dependence; cannabis abuse; alcohol abuse, rule out dependence; and multiple drug dependence. The recent reports from [REDACTED], indicate that claimant is looking forward to returning to her previous work as a potato grader [claimant's expectation, and interest in future employment, shows that claimant thinks she is able to work. Claimant's active involvement in returning to work as a potato grader rebuts the presumption that claimant is unable to work].

(9) Claimant recently applied for federal disability benefits. Claimant was approved for RSDI (December 2008). However, her SSI application was denied.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P based on her bipolar disorder, anxiety disorder and depression. Claimant also thinks she is disabled based on her arthritis, stomach dysfunction, hypertension and bladder dysfunction.

Also, claimant thinks she is eligible because her friend Burt helps her keep track of her medications. Burt also helps claimant with her bills (car insurance).

Finally, claimant thinks she is disabled because she takes approximately 10 medications to control her bipolar disorder. Claimant thinks that the combination of her bipolar disorder plus her psychotropic medication prevents her from working on a full-time basis.

Claimant also thinks she is eligible for disability based on her GAF of 40.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled light 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 retains the residual functional capacity to perform her past work (unskilled/light) as a potato grater.

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).

To determine how a severe mental impairment affects claimant's ability to work, the following regulations must be considered.

(a) **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.**

...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.**

...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.**

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 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. 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, claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

The severity/duration requirement is a *de minimus* requirement. Therefore, claimant meets the severity and duration 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 potato grater. Claimant's work as a potato grater was light unskilled work.

Claimant's records from the [REDACTED] from August 2008 clearly indicate that claimant was ready, able and looking for work as a potato grader.

Although claimant's age, and the combination of her physical and mental impairments create a presumption of eligibility for MA-P; claimant's clear intention, in August of 2005, to obtain work as a potato grader rebuts the presumption of disability.

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

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 and Step 4.

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: January 25, 2010

Date Mailed: January 26, 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.

2008-18792/JWS

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 receipt date of the rehearing decision.

JWS/vmc

cc:

