

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: 2008-26871
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 2008
Ingham 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 Lansing on September 16, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Ellen Arman (lead worker).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was submitted and sent to State Hearing Review Team (September 26, and December 12, 2008). Claimant waived the timeliness requirements so her new medical evidence could be reviewed by SHRT. After SHRT's third non-disability decision, the Administrative Law Judge issued the following decision.

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/Retro/SDA applicant (April 11, 2008) who was denied by SHRT (August 14, 2008) due to claimant's ability to perform unskilled sedentary work.

Claimant requests Retro MA for January, February and March 2008.

(2) Claimant vocational factors are: age—42; education—high school diploma; post high school education—none; work experience—manager at a [REDACTED] convenience store, teacher's aid for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since May 2004 when she was a manager at a [REDACTED] store.

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

- (a) Migraine headaches;
- (b) Chest pain;
- (c) Unable to walk, stand, twist, or bend for long periods;
- (d) Chronic back pain;
- (e) Has side effects from psychotropic medications;
- (f) Memory loss;
- (g) Depression;
- (h) Chronic asthma;
- (i) Uses breathing machine.

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

OBJECTIVE MEDICAL EVIDENCE (August 14, 2008)

SHRT thinks that claimant is able to perform unskilled sedentary work.

SHRT thinks that claimant is not eligible under Listings 3.03, 1.02, 1.05, 5.05 and 12.04.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, and grocery shopping (sometimes). Claimant was hospitalized in 2007 for treatment of severe depression, attempted suicide and memory loss. Claimant was hospitalized in 2008 for migraine headaches and chest pains. Claimant uses a cane 30 times a month. Claimant uses a walker 30 times a month. Claimant uses a wheelchair approximately twice a month. Claimant wears a back brace approximately 20 days a month.

(7) Claimant has a valid driver's license but seldom drives an automobile. Claimant drove herself to the hearing today. Claimant is not computer literate.

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

(a) A September 14, 2007 Ph.D. psychological evaluation was reviewed.

The Ph.D. psychologist provided the following background:

Claimant stated that in April 2002 she injured her back while working at [REDACTED]. She stated that she received a worker's compensation settlement through [REDACTED]. She worked a total of 6 years at [REDACTED]. She tried to return to work sometime after her back injury, but was unable to do so. Her last employment was in 2004. Claimant used a walker to help stabilize herself at the time of this evaluation. She appeared to be in severe pain. Claimant stated that she has undergone one back surgery. She also had 8 different injections in her back to ease her pain over the recent years. She stated that she continues to be in severe chronic pain. She also has severe, migraine headaches and asthma. Claimant takes 12 different medications.

Claimant stated that in the Fall of 2006 she sought assistance through the [REDACTED] from a with [REDACTED]. She was very depressed and attempted suicide on two occasions during that period of time. She attempted

suicide by means of overdose. She was hospitalized and placed on suicide watch at that time. She stopped treatment with [REDACTED] in January 2007. She acknowledged that she remains extremely depressed, but denied suicidal ideation at this time. She denied having a history of depression prior to her severe back injury. She stated that her chronic pain and her significantly reduced functional capabilities have resulted in tremendous ongoing depression and desperation.

The Ph.D. psychologist provided the following DSM diagnoses:

Axis I—mood disorder with severe depression, secondary to chronic pain and multiple medical problems.

Axis V—GAF 53.

The Ph.D. psychologist reports that claimant is able to manage her own funds.

- (b) An [REDACTED] internal medicine exam was reviewed.

The internist provided the following history:

Claimant is a 41-year-old female who is here for a general internal medicine exam to evaluate her disabilities. She states that her main disability is related to a back injury that occurred in April 2002 lifting 50 pound boxes. Apparently, in November of 2002, she had some type of surgery at L5-S1 but states her pain worsened after her surgery. Claimant has had continuous pain since that time. She has been treated at the [REDACTED] in the past which included injection therapy, which did not help significantly. She has not had any recent treatments, although she does take various pain medications. Claimant states that most of the pain is at the waist level, although she does have intermittent numbness and tingling in both legs. She also complains of numbness in both arms as well. She also has a history of asthma that was diagnosed when she was in high school. She has not had any emergency room visits or hospitalizations recently. She does have a nebulizer machine at home, which she uses about once a week. She uses Albuterol.

Physical exam:

GENERAL: patient is well developed, well nourished white female. She ambulates on her own using a wheeled walker.

BACK: There is tenderness over the lumbar vertebrate as well as the lumbar paraspinal muscles bilaterally. She has decreased flexion of 20 degrees and decreased extension of 5 degrees. There is no straight leg raise noted, and there is no CVA tenderness.

NEUROLOGIC: Claimant is alert and oriented to time, person and place. Cranial nerves 2-12 are grossly intact. Motor exam shows normal power and tone throughout. Sensory exam is within normal limits. Deep tendon reflexes are 2+ and equal bilaterally. Cerebral function is intact. Gait is normal.

ASSESSMENT:

- (1) Chronic back pain; claimant has had problems with her back since she had a back injury of April 2002. She had surgery in November of 2002, but that was not successful. Since that time, she has also had treatment at the Pain Clinic with injection therapy, which also did not help significantly. She continues to have chronic pain the lower back. On exam, she does have tenderness in the lower lumbar region. She does have decreased range of motion, as noted above. I do not find any evidence of radiculopathy on exam today. **At this point, she certainly should not be doing any significant lifting of more than 5-7 pounds, nor should she be doing any bending or twisting.**
- (2) History of asthma. The patient has had asthma since high school. She has not required any emergency room visits or hospitalizations recently. She does use a neubilizer machine at home about one time a week. Her lungs today were clear.

(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 Ph.D. psychologist provided the following DSM diagnosis:

Axis I—mood disorder, with severe depression, secondary to chronic pain and multiple medical problems. Axis V—GAF 53. The Ph.D. psychologist did not report any job related functional limitations based on his diagnosis. Claimant did not provide a DHS-49D or a DHS-49E to establish a residual mental functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The [REDACTED] internist provided diagnoses of chronic back pain and history of asthma. The internist reported the following work limitations: no lifting of more than 5-7 pounds and no bending or twisting.

(11) Claimant's most prominent complaint is back pain secondary to back dysfunction.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied claimant's application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

The medical records provided by claimant verify the following diagnoses: chronic back pain and history of asthma.

The [REDACTED] internist reported the following work limitations: unable to lift 5-7 pounds and unable to do bending or twisting.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled sedentary work.

The department reviewed Listings 3.03, 1.02, 1.04, 5.05 and 12.05 and determined that claimant was not eligible based on any of these Listings.

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).

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, or engaging in work of a type performed for pay. PRM Glossary, page 34. The evidence of record shows that claimant is not currently performing SGA.

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.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months.

The severity/duration requirement is a *de minimus* requirement. Therefore, claimant meets the severity and duration test at this step. 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 that she meets any of the Listings.

However, SHRT evaluated the following Listings. However, SHRT determined that claimant is not eligible under the following Listings: 3.03, 1.02, 1.04, 5.05 and 12.04.

Claimant does not meet the Step 3 disability requirements.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a [REDACTED] manager at a convenience store. In this capacity, claimant was required to wait on customers, supervise employees, and stock products. This occasionally involved lifting boxes weighing 50 pounds or more.

The medical evidence of record establishes that claimant has chronic back pain and recent back surgery. She is unable to do the required heavy lifting of her previous work as a manager at [REDACTED].

Based on this analysis, claimant is unable to return to her previous work as a manager at [REDACTED].

Claimant meets 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.

For the purposes of this analysis, the classified jobs as sedentary, light, medium and heavy. These items are defined in the [REDACTED], published by the [REDACTED] [REDACTED] at 20 CFR 416.967.

The medical evidence of record establishes that claimant is able to perform at least unskilled sedentary work.

First, claimant alleges disability based on a combination of mental impairments: memory loss and depression. The Ph.D. psychologist provided the following diagnoses: mood disorder with severe depression, secondary to chronic pain and multiple medical problems. Axis V—GAF

of 53. The Ph.D. psychologist did not report the claimant has any functional limitations at this time that would preclude her from performing unskilled sedentary work.

Second, claimant alleges disability based on back dysfunction and asthma. The [REDACTED] internist confirmed that claimant has chronic back pain. Claimant has tenderness in the lower lumbar spine and does have decreased range of motion. However, he did not find any evidence of radiculopathy during the exam. The internist imposed the following limitations: no lifting of more than 5-7 pounds and no bending or twisting.

The lifting limitations imposed by the [REDACTED] internist on August 13, 2007 do not preclude claimant from performing unskilled sedentary work.

Third, claimant testified that she is unable to work based on her chronic back pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability.

Looking at the medical record as a whole, the Administrative Law Judge concludes that claimant is able to perform unskilled sedentary work. Claimant performs a few activities of daily living, and is able to drive an automobile, when she has no other form of transportation. Claimant was able to represent herself confidently at the hearing. Claimant lives with her daughters and granddaughters and has an active social life.

Based on a careful evaluation of the medical evidence, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to work as a ticket taker at a theater, as a parking lot attendant, or as a greeter at Wal-Mart.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 5.

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 15, 2010

Date Mailed: January 15, 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 receipt date of the rehearing decision.

JWS/vmc

cc:

