

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: 2008-28776
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2009
Monroe 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 on March 25, 2009, in Monroe. Claimant personally appeared and testified under oath.

The department was represented by Pam Farnsworth (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team on March 25, 2009.

Claimant waived the timeliness requirements so her new medical could be reviewed by SHRT.

After SHRT's second disability denial, the ALJ 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) 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) and for 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 (May 8, 2008) who was denied by SHRT (September 3, 2008) based on claimant's ability to perform light range of simple unskilled work. SHRT relied on Med-Voc Rule 204.00(H).

(2) Claimant's vocational factors are: age—37; education—11th grade; post high school education—GED; work experience—cashier at [REDACTED], stock and floor clerk for [REDACTED], cashier, cook, and server for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since July 2008 when she worked as a cashier for [REDACTED].

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

- (a) Bipolar disorder;
- (b) Obsessive Compulsive Disorder;
- (c) Depression;
- (d) Swelling and pain in the abdomen.

(5) SHRT evaluated the claimant's medical and found:

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

* * *

Claimant underwent a total abdominal hysterectomy in [REDACTED], due to uterine fibroids, menometrorrhagia, pelvic pain and abdominal Pap smear. There was no evidence of malignancy (pages 130-132).

A CT of the abdomen was unremarkable. A CT of the pelvis revealed several small right ovarian cysts (page 22).

A DHS-49 form filed on date of [REDACTED], showed claimant had asthma, pelvic pain, fatigue and possible ovarian mass (page 8). She had no physical or mental limitations (page 9). In 6/2008, claimant was seen in the ER due to abdominal bloating. Claimant reported a history of uterine cancer. She also reported having 16 laparoscopic surgeries of her abdomen as well as removal of her uterus for cancer. Her exam was unremarkable, except for surgical scars and psoriatic rash. Her urinalysis and both CBC were normal. An ultrasound of her pelvis showed status post hysterectomy. Both ovaries were normal in size and appearance. She had floatable ovaries on Doppler (new information).

An exam dated [REDACTED] showed claimant had psoriasis lesions over her knuckles and elbows. She had chronic pain and joint pain. Her lung fields were clear and there were no rales or rhonchi or wheezing noted. It was normal. Grip was equal bilaterally. Gross and fine dexterity appeared bilaterally intact (new information).

A psychological evaluation ([REDACTED]) showed claimant had a long history of alcohol, cocaine and marijuana dependence as well as based on her use of other drugs. She says she has been drug free since [REDACTED]. She had good hygiene and grooming. She displayed good expressive language skills. Her responses were spontaneous, clear, on target of moderate depth and she displayed no circumstantial or tangential tendencies. There were no psychotic symptoms. She had appropriate affect throughout the testing. IQ testing showed claimant touching on the borderline range of intellectual functioning. Cognitive disorder NOS, obsessive compulsive disorder, polysubstance dependence—in remission, as reported by claimant, and depressive disorder (NOS) pending new information.

* * *

(6) Claimant lives with her fiancé and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming (sometimes) and grocery shopping (needs help). She does not use a cane, or walker, a wheelchair or a shower stool. She does not wear braces. Claimant did not receive inpatient hospitalization services in 2008 or 2009.

(7) Claimant does not have a valid drivers' license. She is not computer literate.

(8) The following medical records are persuasive:

- (a) The probative medical evidence is presented in SHRT Summary at Paragraph #5 above.

(9) The probative psychological evidence does not establish an acute (non-exertional) mental condition which prevents claimant from performing customary work functions for the required period of time. Claimant alleges the following impairments: bipolar disorder, obsessive compulsive disorder, and depression. The psychological evidence of record shows the following diagnoses: cognitive disorder NOS, obsessive-compulsive disorder, polysubstance dependence—in remission, and depressive disorder, NOS. The [REDACTED] psychological report provides the following DSM diagnoses: Axis I—cognitive disorder, NOS; obsessive-compulsive disorder; polysubstance dependence; depressive disorder NOS. Axis V/GAF—45. The Ph.D. psychologist did not expressly state that claimant is totally unable to work based solely on her mental impairments.

(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 independent medical examiner, in a report dated [REDACTED], provided the following impressions:

- (a) Psoriasis;
- (b) Uterine cancer;
- (c) Bipolar disorder;
- (d) Bronchitis and asthma;
- (e) Weight gain;
- (f) Dyslexia.

The consulting physician did not expressly report that claimant is totally unable to work.

(11) The 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 is able to perform a wide range of simple unskilled work.

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

Based on claimant's vocational profile (younger individual, GED education and history of unskilled work) MA-P was denied using Med-Voc Rule 204.00(H). SDA was denied because the nature and severity of claimant's impairments do not preclude all work activity for 90 days.

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).

To determine to what degree claimant's mental impairments limit her ability to do basic work activities, the following regulations must be considered:

(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).

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. (PAM 260/261.) "Disability," as defined by MA-P/SDA is a legal term which is individually determined by 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 earning substantial income, she is not eligible for MA-P/SDA.

SGA is defined as performing 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 or age, education, or work experience. 20 CFR 416.920(b).

The 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 meets the SSI definition of severity/duration.

Claimant must establish an impairment which is expected to result in death, has existed for 12 months, and totally prevents all basic work activities.

Also to qualify for MA-P/SDA, claimant must have worked in substantial gainful work criteria. 20 CFR 416.920(a).

The severity/duration requirement is a *de minimus* requirement; therefore, claimant meets the second disability test.

STEP #3

The issue at Step 3 is whether claimant meets the Listing of Impairments as defined by the federal regulations. Claimant did not meet the disability 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. The claimant previously worked as a cashier performing sedentary work.

The medical evidence of record does not establish claimant is totally unable to work. Claimant does not have any lifting restrictions. Claimant did not have any bending or lifting restrictions at [REDACTED].

Therefore, claimant 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 preponderance of the medical/psychological evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on mental impairment: Bipolar disorder, obsessive compulsive disorder and depression. The medical records show that claimant has a diagnosis of cognitive disorder, NOS, obsessive-compulsive disorder, polysubstance dependence--in remission and depressive disorder, NOS. However, the consulting psychologist does not state unequivocally that claimant totally unable to work based on her mental impairment.

Second, claimant alleges disability based on physical impairments: chronic swelling of the abdomen with pain. The consulting physician, who examined claimant on [REDACTED], provided the following diagnoses; psoriasis; uterine cancer; bipolar disorder; chronic bronchitis and asthma; weight gain and dyslexia. The consultative physician did not state that claimant was totally unable to work based on her physical impairments.

Finally, the claimant testified that a major impairment to her return-to-work was her chronic abdominal swelling with 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 profound and 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 combination of mental and physical impairments. Claimant currently performs many activities of daily living and has an intimate social life with her fiancé.

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, she is physically able to work as a ticket taker for a theater, as a parking lot attendant, and greeter for [REDACTED], and cashier for [REDACTED].

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant does not meet the MA-P/SDA disability, 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: June 4, 2009

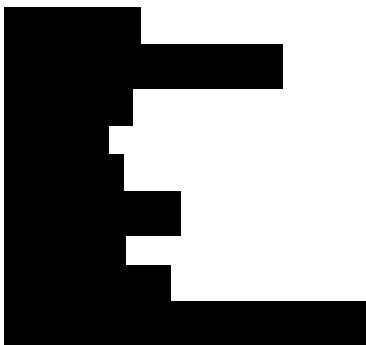
Date Mailed: June 5, 2009

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/tg

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