

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: 2008-7809
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 27, 2008
St. Joseph 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 Centreville on March 27, 2008. Claimant personally appeared and testified under oath.

The department was represented by Jan Ferguson (FIM) and Carolyn Baker (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT.

Claimant's new medical evidence was not received by the record closed date.

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/SDA applicant (July 3, 2007) who was denied by SHRT (February 22, 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--44; education--10th grade, post-high school education--GED; work history--greenhouse laborer, restaurant cashier, housewife, home help aide, and cashier at a strawberry farm.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she was a greenhouse laborer in May 2007.

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

- (a) Bipolar disorder;
- (b) Obsessive compulsive disorder;
- (c) Anorexia;
- (d) Post-traumatic stress disorder.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

ER records of [REDACTED] indicate claimant was treated for hyperventilating and what was thought to be a reaction to antibiotics (page 74).

ER records [REDACTED] indicate claimant was treated for hyperventilating. Her physical exam was otherwise normal (page 70).

ER records of [REDACTED] indicate claimant was treated for bleeding for status-post hysterectomy, which had been performed recently (page 68).

ER records of [REDACTED] indicate claimant was seen for her complaint of depression. However, no mental status was performed. Diagnosis was made based on her statements (page 31).

Psychiatric consultative examination of [REDACTED] indicates claimant was seen for a complaint of an anxiety attack. (The Ph.D. psychologist noted she complained of an attack lasting 12 hours--this is unheard of.) The Ph.D. psychologist also reported her presentation was within normal limits and was not consistent with an eating disorder or an extreme weight loss. She was noted to have poor appetite, relying on only one cup of fluid for hydration daily, and smoking marijuana. The only mental health treatment history was two visits with a limited licensed psychologist. She was given a diagnosis of panic disorder without agoraphobia, social phobia and adjustment disorder, with a GAF estimated at 85 (page 13).

ANALYSIS: The evidence in the file does not demonstrate any impairments that would pose a significant limitation. Her presentation was noted to be somewhat inconsistent with her reporting.

* * *

(6) Claimant lives with her sister and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant did not report that she uses a cane, walker, wheelchair or shower seat. Claimant did not report that she wears braces on her arms or legs.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) See the medical evidence summary prepared by SHRT at Paragraph #5, above.

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. Although claimant reports bipolar disorder, obsessive compulsive disorder, anorexia, and post-traumatic stress disorder, these diagnoses were not confirmed by the Ph.D. psychologist who evaluated claimant. The Ph.D. psychologist provided diagnoses of panic disorder without agoraphobia, social phobia, and adjustment disorder with mixed features. The Ph.D. psychologist reported an Axis V/GAF score of 85.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions. Claimant reported that she suffers from anorexia. There is no medical conformation of this diagnosis.

(11) Claimant's primary complaints are bipolar disorder, obsessive compulsive disorder, post-traumatic stress disorder and anorexia.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC) to perform a wide range of unskilled 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 the medical evidence of record does not document a mental/physical impairment that significantly limits claimant's ability to perform basic work activities.

The department denied MA-P/SDA due to claimant's failure to establish the required severity and duration.

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.

Claimants who are working and performing Substantial Gainful Activity (SGA) are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The medical/vocational evidence of record shows that claimant is not currently performing SGA.

Claimant meets the Step 1 eligibility test.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months from the date of application. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the severity/duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit her physical and/or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT correctly found that claimant does not meet the severity and duration requirements. The record shows that claimant is not currently receiving psychological care.

Furthermore, the psychologist who evaluated her on [REDACTED] indicated that claimant had exaggerated her panic attacks. Furthermore, the Ph.D. psychologist concluded that claimant had no deficit in her ability to function independently on a sustained basis. She reported that claimant is able to get out of the home, she talks about weekly exercise, and the ability to take care of her basic needs, and those of her pets.

Although claimant reported to the Ph.D. psychologist that she was severely depressed, had memory problems and was frequently confused, the Ph.D. psychologist concluded that the testing which she administered was not consistent with the reports provided by claimant.

Therefore, claimant does not meet the Step 2 eligibility test.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a laborer at a greenhouse. However, claimant has also worked as a restaurant cashier, as a home help aide and as a cashier for a strawberry farm.

The psychological evidence provided in the psychological evaluation dated [REDACTED] clearly shows that claimant is able to return to her previous work as a laborer. She is also able to return to her previous work as a cashier for a restaurant or a strawberry farm.

Since claimant is able to return to her past work, she does not meet the Step 4 eligibility test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the *Dictionary of Occupational Titles*, published by the U.S. Department of Labor at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled/semi-skilled sedentary, light and medium work. Claimant is able to work as a ticket taker for a theatre, as a pizza delivery driver, as a parking lot attendant and as a greeter for [REDACTED]. Also, she is able to return to her previous work as a cashier for a grocery store or strawberry farm.

During the hearing, claimant testified that the major impediment to her return to work was her combination of psychological impairments including bipolar disorder, obsessive compulsive disorder, post-traumatic stress disorder and anorexia. A careful review of the medical evidence shows that none of these conditions have been properly documented with reliable clinical evidence.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her multiple mental impairments. Claimant currently performs extensive activities of daily living, cares for two dogs and three cats, drives a car 12 times a month and is computer literate. This means that claimant is able to perform sedentary, light, medium work (SGA).

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

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. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as described above.

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: April 21, 2009

Date Mailed: April 21, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

cc:

