

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: 2009-16737
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2009
Huron 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 July 22, 2009 in Bad Axe. Claimant personally appeared and testified under oath.

The department was represented by Julie Booms (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on July 22, 2009. Claimant waived the timeliness requirement so his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, 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) for 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 (December 19, 2008) who was denied by SHRT (April 17, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age—49; education—9th grade; post high school education--nursing courses leading to a nurse aide certificate; work experience—home help nursing care provider, certified nurse aide at a nursing home.

(3) Claimant has not performed substantial gainful activity (SGA) since 2001 when she worked as a home help nursing care provider for a neighbor.

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

- (a) Unable to walk long distances;
- (b) Unable to sit for long periods;
- (c) Arthritis in lower back and neck;
- (d) Arthritis pain;
- (e) Left-sided weakness;
- (f) Takes pain medications;
- (g) Chronic stress;
- (h) Needs spinal surgery;
- (i) Deaf in both ears;
- (j) Uses a borrowed hearing aid, which helps.

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

OBJECTIVE MEDICAL EVIDENCE (April 17, 2009)

SHRT decided that claimant was not disabled because she failed to establish an impairment which meets the severity and duration requirements. SHRT evaluated claimant's disability using the SSI

Listings at 20 CFR 404, Subpart P, Appendix. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT denied disability based on lack of severity under 20 CFR 416.920(c). SHRT noted that the medical opinion in the record was not given controlling weight due to 20 CFR 416.927.

(6) Claimant lives with her boyfriend and performs the following activities of daily living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes), laundry (needs help); grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or a shower stool. Claimant uses a neck brace when riding in a car and uses a neck brace approximately four times a month when riding in an automobile. Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant does not have a valid drivers' license and does not drive an automobile. Claimant is computer literate, however.

(8) The following medical reports are persuasive:

(a) A [REDACTED] physical exam report was reviewed.

The physician provided the following background:

Chief complaints: arthritis, hearing disorder, depression.

Claimant formerly worked as a nurse's aide, until being forced to leave work in 2000 because of a legal charge (marijuana).

Claimant denies any specific injuries, but currently has distress which involves the upper and lower spines, knees and ankles. She currently takes Vicodin 750 mg. as well as Methadone 10 mg. TID PRN for pain. The pain is particularly severe in the neck and right arm and she has noticed an area of numbness in the medial aspect of the right distal arm. There is enclosed a review by her neurosurgeon [REDACTED] and her review of the MRI reviewing 'broad based left paraspinal disc herniation with complete effacement of the subarachnoid space and slight deformity of the spinal cord...' Apparently, surgery

has been recommended and is still under consideration by claimant.

Claimant currently wears a hearing aide in the left ear, which was given to her by the husband of a deceased spouse. She has never had an audiogram. She feels it does help the hearing. Hearing loss has been persistent for the past decade. Claimant admits to depression on and off for the past ten years.

Claimant admits to depression on and off for the past ten years. She currently takes no medication for this. Initially, she did see a psychiatrist.

* * *

The consulting physician provided the following conclusions:

- (1) Cervical disc disease, by history and enclosed records of MRI review by neurosurgeon.

The physical examination reveals mildly impaired left-sided rotation of the cervical spine and an otherwise normal neurological examination, except for hypethesia in the distal T1 distribution on the right. There appears to be no impaired motor strength.

- (2) Arthralgias of the lumbar spine, knees and ankles. These are secondary to early degenerative joint disease or, in case of the lumbar spine, disc disease.

Except for mild impairment of dorsolumbar extension ROM is normal. Likewise, the neurological and motor strength exams are normal.

- (3) Hearing disorder, left side.

This is corrected by use of a nonprescribed hearing aid given to her.

- (4) History of depression.

- (b) An [REDACTED] report was reviewed. The [REDACTED] psychologist provided the following backlog:

- (1) Complaints and symptoms; no records were available for review prior to seeing claimant. Claimant states that she has been hospitalized twice for psychiatric care. The most recent was in 1994. She was at [REDACTED] for three days. She was 'paranoid' at the time and was having serious marital problems because of her husband's abuse. She states that she was diagnosed, 'Psychosis.' She was treated with Risperdal and Prolixin. In terms of family history, claimant states that her sister has been diagnosed with schizophrenia. When asked about current limiting symptoms, claimant reports having acute pain in multiple parts of her body. Claimant states that she has a deformed spine. She suffers from a 'joint and bone disease.' Claimant states she has arthritis in her knees, fingers, and arms. For the past six years, she has been experiencing neck pain, 'ruptured disc.' On a 10 point scale, claimant states that her pain level was '5' with medication. She is able to sit for 30 minutes and stand for 30 minutes. She can walk a block and lift no more than five pounds. If she exceeds these exertion levels, her pain increases. She states that she has been very depressed since she has lost custody of her children several years ago.

The psychologist provided the following additional information:

Claimant states that her principle limitation involves chronic, acute pain in multiple parts of her body. She states that she has been depressed since her children were removed from her custody due to alcohol and marijuana charges. Claimant denies any abuse of either in recent years. Her medications are primarily related to relieve pain. Reported interest in activities appear appropriate. Cognitive functioning appears average. Mild deficits are noted in respect to memory and concentration. She related appropriately.

The psychologist provided the following diagnoses:

Axis I—adjustment disorders with depressed mood;

Axis V/GAF—60.

(9) The probative psychological 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 thinks that she has disabling stress symptoms due to chronic stress symptoms. The [REDACTED] psychological report provides the following diagnosis: Axis I—adjustment disorder with depressed mood; Axis V/GAF—60. The consulting psychologist did not state the claimant is totally disabled based on her mental impairments. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(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 consulting internist provided the following diagnoses: (1) cervical disc disease, by history; (2) arthralgias of the lumbar spine, knees and ankles; (3) hearing disorder left side; (4) history of depression. The consulting internist did not state that claimant is totally unable to work. There is no current probative medical evidence in the record to establish that claimant was totally unable to work based on her combined exertional impairments.

(11) Claimant recently applied for federal disability benefits from 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 normal work activities.

The department reviewed claimant's impairments using the SSI Listing of Impairments at 20 CFR 404, Subpart P, Appendix.

The department decided that claimant does not meet any of the SSI Listings, at this time.

The department considered the medical opinion provided by claimant in light of 20 CFR 416.927. The evidence in the file at this time does not demonstrate any other impairment that would impose a significant limitation on claimant's ability to work.

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).

To determine to what degree claimant's alleged mental impairments limit her ability to work, 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 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).

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 standards 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 is earning substantial income, she is not disabled for MA-P/SDA purposes.

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 vocational evidence of record shows that claimant is not currently performing SGA. Therefore, claimant meets the Step 1 disability test at this time.

STEP #2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration. Claimant must establish that she an impairment which is expected to result in death, has existed for at least 12 months, and totally prevents all basic work activities. 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).

Since the severity/duration requirement is a *de minimus* requirement, the 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 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's last work was as a self-employed home help nursing care provider. This was medium work.

The medical evidence of record establishes that claimant has osteoarthritis of her knees, spinal dysfunction and deafness. These impairments, taken in combination, preclude claimant from performing work as a home help nursing care provider.

Since claimant is no longer able to work as a home help nursing care provider, she is unable to return to her previous work, therefore, 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.

Claimant has the burden of proof to show by a preponderance of the medical 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 chronic stress. The consultative psychological report (October 30, 2007) provides the following diagnoses: Axis I—adjustment disorder with depressed mood; Axis V/GAF—60. The consulting psychologist did not report that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on an inability to walk and sit for long periods, arthritis in her lower back and neck, left-sided weakness and deafness in both ears. The consulting physician provided the following diagnoses: cervical disc disease, arthralgias of the lumbar spine, knees and ankles, hearing disorder, left side and history of depression. The consulting physician did not report that claimant is totally unable to work.

Third, claimant testified that a major impediment to her return to work was her chronic arthritis pain in her lower back and neck, left-sided weakness and generalized left-sided weakness. 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 impairments. Claimant performs several activities of daily living (ADLs), has an active social life with her boyfriend and her minor son, and 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, she is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit/stand option at the work place.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under 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 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: November 18, 2009

Date Mailed: November 18, 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

cc:

