

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: 2009-18276
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 2009
Genesee 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 June 3, 2009 in Flint. Claimant personally appeared and testified under oath.

The department was represented by Vicki Greene (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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 (July 29, 2008) who was denied by SHRT (April 22, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro-MA for April, May and June 2008.

(2) Claimant's vocational factors are: age—50; education—11th grade, post-high school education—GED and training in computer applications; work experience—childcare provider for DHS, secretarial work, and assembly line work at a factory.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since March 2009 when she worked as a childcare provider for the Department of Human Services.

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

- (a) Cervical dysfunction;
- (b) Three herniated discs;
- (c) Hypertension;
- (d) Seizures.

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

OBJECTIVE MEDICAL EVIDENCE (APRIL 20, 2009)

SHRT decided that claimant was able to perform unskilled sedentary/light work. SHRT evaluated claimant's disability using SSI Listings 1.01 and 4.01. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on claimant's ability to perform other work under 20 CFR 416.967(a) and 967(b).

(6) Claimant lives with her mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing and grocery shopping. Claimant uses a cane on a daily basis. She does not use a walker, a wheelchair or a shower stool. Claimant wears a neck brace approximately 20 times a month. Claimant wears an arm brace

approximately 20 times a month. Claimant did not receive inpatient hospital services in 2008 or 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 4 times a month. Claimant has 6 grandchildren who she sees on a regular basis.

(8) The following medical records are persuasive:

- (a) A [REDACTED] Report (DHS-49D) was reviewed. The PhD psychologist provided the following Mental Status Examination: Sad affect. Depressed mood. Intermittent eye contact. Good expression of thoughts and feelings.

* * *

The PhD psychologist provided the following DSM diagnoses:

Axis I—Depressive disorder NOS, secondary to pain.
Axis V/GAF—68.

- (b) A January 13, 2009 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed. The psychologist reported 1 markedly limited skill set (#11). The ability to complete a normal work day and work sheet without interruptions from psychologically based symptoms and the ability to perform at a consistent pace.
- (c) An August 27, 2008 Medical Needs Form (DHS-54A) was reviewed. The physician states that claimant has a medical need for assistance with shopping and housework. The physician states that claimant is unable to perform her usual occupation and unable to work at any job for approximately one year.
- (d) An August 22, 2008 Medical Examination Report (DHS-49) was reviewed. The physician provided the following current diagnoses: (a) Neck pain from cervical stenosis; (b) Depression (c) Hypertension.

The physician states claimant is able to lift less than 10 pounds frequently. She is able to stand/walk less than 2 hours in an 8 hour day. She is not able to use her hands/arms for any activity.

(e) An [REDACTED] was reviewed. The report shows the following diagnoses: Exacerbation of chronic back/neck pain.

(9) Claimant alleges a severe mental impairment as the basis for her disability: Depression. A recent DHS-49D (Psychological Examination Report) states that claimant has a diagnosis of depressive disorder NOS and a GAF score of 68. Based on the Axis V score of 68, claimant is able to perform normal work activities.

(10) The probative medical evidence does establish a diagnosis of neck pain from cervical stenosis, depression and hypertension. Claimant's physician opines that she is unable to perform any work due to her cervical stenosis. However, this Medical Source Opinion (MSO) is contrary to the great weight of the medical evidence in the record. The medical record in this case contains contradictory evidence. There is no consensus on claimant's physical limitations in the medical record. The PhD psychologist states that claimant has a GAF score of 68, which is evidence of a minor mental impairment. The diagnoses provided by claimant's family physician do not support a finding of complete disability. At this time, there is no reliable medical evidence to establish a severe, disabling physical condition that totally precludes all work activities.

(11) Claimant was recently employed as a child care provider and discontinued that work in March 2009 because her employer (sister) no longer needed her services.

(12) Claimant recently for federal disability benefits with the Social Security Administration. Her application is currently pending.

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 is able to perform normal work activities. The department evaluated claimant's impairments using SSI Listings 1.01 and 4.01. The department decided that claimant does not meet any of the applicable SSI Listings.

Based on claimant's vocational profile [individual approaching advanced age, age 50, with a GED education and course work in computer applications, in conjunction with work experience as a child care provider, secretary, and factory worker], the department denied disability benefits based on claimant's ability to perform other 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 a mental impairment limits claimant's 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 Functions.**

...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. 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 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(c).

The vocational evidence of record shows 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. Claimant must establish an impairment which is expected to result in death, has existed for 12 months, and totally prevents all current 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, 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 previously worked as a child care provider for the Department of Human Services. Claimant provided child care services for her sister's children.

The medical evidence of record does not establish that claimant is unable to perform her previous work as a child care provider. When asked why she left her position as a child care provider, claimant replied that her sister no longer needed her services.

Since claimant is still able to perform work as a child care provider, she 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 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: Depression. The psychological reports in the record show that claimant's mental impairment is not a severe condition. The PhD psychologist, in the DHS-49B Psychological Examination Report, states that claimant has a GAF of 68. This score shows that claimant's mental impairment does not preclude substantial gainful employment.

Second, claimant alleges disability based on cervical dysfunction, hypertension and seizures. Claimant's seizure impairment is not documented in the medical records. Claimant's treating physician states that she is disabled based on cervical disc dysfunction and hypertension. However, this medical source opinion (MSO) is not corroborated by the medical record as a whole. Although claimant is precluded from heavy lifting; the medical evidence of record does not show that she is totally unable to perform any work.

Third, claimant testified that a major impediment to her return to work was her back pain secondary to her cervical dysfunction. 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 back 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 a significant number of activities of daily living, has an active social life with her mother and her grandchildren and is able to drive an automobile approximately 4 times a month. Also, she 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 physically able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this would offer claimant a sit/stand option.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application, based on 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: September 17, 2009

Date Mailed: September 19, 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.

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cc:

