

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED] [REDACTED],
Claimant

Reg. No: 2009-36273
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 22, 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 October 22, 2009, in Flint on October 22, 2009. The claimant personally appeared and testified under oath.

The department was represented by Marvin Amburgey (ES).

The record closed on October 22, 2009.

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 (January 14, 2009) who was denied by SHRT (September 30, 2009) due to claimant's ability to perform sedentary work. SHRT relied on Med-Voc Rule 203.30 as a guide. Claimant requested retro MA for November and December 2008.

(2) Claimant's vocational factors are: age--41; education--11th grade; post high school education--GED and two and one-half semesters at [REDACTED]. Claimant did obtain a certificate as a phlebotomist; work experience--leasing agent for apartment complex, receptionist for a chiropractic office, café worker at [REDACTED] and cashier at a gas station.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a leasing agent for an apartment complex in 2008.

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

- (a) Bipolar disorder;
- (b) Panic attacks;
- (c) Anxiety disorder;
- (d) Sleep dysfunction;
- (e) Difficulty concentrating;
- (f) Status post automobile accident (2005); and
- (g) Three surgeries to right knee;
- (h) Low back pain;
- (i) Neck pain;
- (j) Right knee pain;
- (k) Difficulty walking;
- (l) Side affects from pain medication.

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

OBJECTIVE MEDICAL EVIDENCE (September 30, 2009)

SHRT decided that claimant was able to perform unskilled work. SHRT evaluated claimant's impairments using SSI Listings 1.02, 12.04, 12.06. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.968(a) due to claimant's ability to perform unskilled medium work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning (needs help), mopping (sometimes), vacuuming (sometimes), laundry, and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower stool. She does wear a brace on her right knee approximately 12 times a month. Claimant was not hospitalized overnight as an in-patient in 2008 or 2009.

(7) Claimant does have a valid driver's license and drives an automobile approximately 16 times month. Claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) A [REDACTED] internal medicine evaluation was reviewed. The physician provided the following summary of complaints: 'Bipolar, anxiety, and knee problems.'

Claimant was involved in an automobile accident in 2005, at which time she injured her knees, right greater than left. This resulted in three surgeries to her right knee, the first to place hardware, the second to manipulate and clean out scar tissue, and the third to remove the hardware and 'clean up.' She continues to have pain in her right leg, wearing a brace on her right knee, seven out of ten days or so. It gives her support and stability. She wears the brace mostly during the day, but not at night. Relafen has been prescribed for her pain, but it does not always help. She does not use an assistive device.

Claimant is able to drive, but does so infrequently. **She is independent with her activities of daily living (ADLs).** Her mother helps her with housework; she can prepare simple meals. She walks her dog on a daily basis, for about ten minutes at a time. She cannot climb stairs well, but must do so because she lives on the third floor of her apartment building. She estimates she can walk one block without difficulty on a flat surface. She tends to develop anxiety attacks when she is in new surroundings, such as this office for today's examination.

* * *

PAST MEDICAL HISTORY

Other than above, significant for anxiety, bipolar disease, and substance abuse.

* * *

SOCIAL HISTORY

Tobacco: one pack/per day for 25 years. Alcohol: none. Hobbies: none. Occupation: leasing agent for apartment complex. Education: two years of college.

* * *

CONCLUSIONS:

(1) Knee pain:

Claimant complained of persistent knee pain since an automobile accident experienced in 2005. She did not require use of an assistive device to ambulate.

* * *

NOTE: Consulting internist did not prohibit all work activities due to claimant's back and knee dysfunction, in combination with her pain. Second, the consulting internist did not prohibit all work activities due to claimant's mental status.

* * *

(b) A February 19, 2009 psychiatric/psychological examination report (DHS-49E) was reviewed.

The social worker provided the following DSM Diagnosis:
Axis I--bipolar disorder--mixed.

* * *

Axis V/GAF--50.

- (c) A February 19, 2009 psychiatric/psychological examination report (DHS-49E) was reviewed. The social worker's report shows claimant markedly limited in 13 of the 20 categories reviewed.

The social worker provided the following comments:

Claimant reports being in a fog, unable to concentrate or work through situations. Becomes overwhelmed when there is a change in routine or stressful situation arise. Overwhelmed, mood swings, easily irritated and frustrated. She reports either being numb to her feels or overly emotional. Feelings of helplessness and hopelessness. Hygiene is poor at times, an anhedonia and lack of motivation occur. Becomes isolative and has poor concentration. Uncomfortable in crowds. She feels constantly anxious and cannot wait for the day to end.

This report was not prepared by a Ph.D. and M.D. or D.O. Therefore, the Administrative Law Judge will not give it great weight pursuant to Social Security Regulations.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant provided a psychiatric/psychological report and a mental residual functional capacity assessment, prepared by a social worker. The information provided by the social worker is not entitled to great weight because it is not countersigned by an M.D., Ph.D., or D.O.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions. The medical records show that claimant has right knee dysfunction due to an

automobile accident. She also has pain in her neck, back and right knee. Claimant's physical condition was evaluated by a consulting internist. The internist did not prohibit all work activities due to claimant's back and knee dysfunction in combination with her pain. The consulting internist did not prohibit all work activities due to claimant's mental status.

(11) Claimant thinks she is eligible for MA-P/SDA due to her combination of impairments.

(12) Claimant's attempts to obtain Social Security benefits are unknown.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on a combination of her physical impairments (knee dysfunction and pain and her mental impairments) bipolar, panic disorder, anxiety disorder, sleep dysfunction and concentration and her difficulty with concentration.

DEPARTMENT'S POSITION

The department thinks that claimant has a residual functional capacity to perform unskilled medium 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 shows claimant retains the capacity to perform simple unskilled medium 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).

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 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 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/BEM 260/261. "Disability," as defined by MA-P/SDA 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 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. PEM/BEM 260/261.

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.

Therefore, 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 existed, or be expected to exist, for a continuous period of at least 12 months from the date of application. 20 CFR 416.909. The durational requirement for SDA is 90 days. PEM/BEM 261.

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

If claimant does not have an impairment or combination of impairments which profoundly limit her physical or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c). SHRT found that claimant meets the severity and duration requirements using the *de minimus* test.

Therefore, claimant meets the Step 2 eligibility test.

STEP #3

The issue at Step 3 is whether the 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 leasing agent for an apartment complex. This work was light work.

The medical/vocational evidence of record shows that claimant has a moderately reduced ability to walk. She also has some anxiety and bipolar issues. This combination of issues does not preclude claimant from performing her previous work as a rental agent.

Therefore, claimant 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 [REDACTED], published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work.

Notwithstanding claimant's moderate mental limitations (problems with concentration and focus), claimant is able to do simple unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to her return to work was her neck, back and right knee 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work. Although claimant's pain medications do not totally eliminate her pain, they do provide some relief.

It should be remembered that even though claimant has several moderate mental limitations, she does have significant residual work capacities. The consulting internist reported

that claimant's physical examination showed normal ranges. Claimant's neuromuscular examination was essentially normal.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on the combination of her neck, back and knee dysfunction in combination with her mental limitations. Claimant currently performs many activities of daily living, has an active social life with her relatives, and drives an automobile approximately 16 times a month. In addition, claimant is computer literate.

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/BEM 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: August 31, 2010

Date Mailed: August 31, 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 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:

