

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: 2009-4831
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Lake 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 12, 2009. Claimant personally appeared and testified under oath.

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 applicant (August 19, 2008) who was denied by SHRT

(December 3, 2008) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age--48; education—11th grade, post-high school education--GED; work experience—janitor for [REDACTED], office cleaner and home cleaner.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since may 2007, when she worked as a janitor for [REDACTED].

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

- (a) Back dysfunction with pain;
- (b) Bipolar disorder;
- (c) Chronic depression.

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

OBJECTIVE MEDICAL EVIDENCE (DECEMBER 3, 2008)

In 6/2008, claimant was noted to have a history of low back pain and leg pain. Her MRI showed degenerative changes at L4-5 with stenosis at L4-5 and L5-1. On exam, she had pain with range of motion (ROM) of the lumbar spine. Straight leg raise, sciatic stretch, deep tendon reflexes, power and sensation were normal (page 85).

A DHS-49 form, dated 8/2008, showed claimant's exam was within normal limits, except for tenderness of palpitation of the lower lumbar area bilaterally (page 104). The doctor indicated she could occasionally lift 20 pounds, but could only stand/walk less than 2 hours in an 8 hour day. She did not medically require the use of an assistive device for ambulation (page 105).

Claimant was admitted 9/16/2008 due to right upper extremity weakness. Diagnosis was embolic ischemic stroke. She had significant improvement in her right upper extremity with weakness by day 2 with somewhat unsteady gait. (New information from DDS).

Exam dated 9/24/2008, showed decreased grip strength on the right side. She was using a walker (page 5). On 10/8/2008, the neuro,

extremity and respiratory exams were normal. Assessment was chronic low back pain, anxiety, asthma and hypertension (page 4).

Mental health notes, dated 9/2008, showed claimant had a long history of substance abuse. She reported that her medications have helped to keep her symptoms at bay and she did not report any symptoms currently. She did not meet the criteria for services at that time. Her diagnosis included bipolar II disorder and alcohol dependence in sustained full remission (page 76).

* * *

Claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record, and per 20 CRF 416.927 (c) and 927(d), it will not be given controlling weight. The collective medical evidence shows that claimant is capable of performing simple, unskilled light work.

It is noted that claimant was denied SSA/SSI disability by the ALJ on 8/29/2008.

* * *

(6) Claimant lives with her boyfriend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing (needs help), grocery shopping (needs help). Claimant uses a cane approximately 15 days a month. She does not use a walker or a wheelchair. She uses a shower stool approximately 10 times a month. She does not wear braces. Claimant received inpatient hospitalization services in September 2008 for a stroke.

(7) Claimant has a valid driver's license but does not drive. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) Medical records are summarized by SHRT in paragraph #5 above.
- (b) A [REDACTED] Discharge Summary was reviewed. The physician provided the following admitting diagnosis: Right upper extremity weakness. The physician provided the following discharge diagnosis: Embolic ischemic stroke. Claimant was hospitalized for 3 days.

Upon discharge, the physician instructed claimant to have additional testing and to follow-up with her primary care provider.

(9) The probative psychological evidence provided by a MA social worker was reviewed. The MA social worker provided the following Axis I diagnoses: Bipolar II disorder, moderate severity; alcohol dependence, sustained full remission, nicotine dependence. The Axis V/GAF score is 50. Claimant's testimony that she suffers from bipolar disorder and depression is partially sustained by the medical evidence. The [REDACTED] stated bipolar disorder II, alcohol dependence and nicotine dependence. However, claimant failed to provide a DHS-49D or a DHS-49E to show 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. Claimant's treating physician has provided less than sedentary work restrictions based on claimant's physical impairments. The medical record does show that claimant was hospitalized for 3 days in September 2008 for stroke. However, the physician's opinion that claimant is totally unable to work is inconsistent with the great weight of the objective medical evidence in the record and, based on 20 CFR 416.927(c) and 927(d), the treating physician's opinion will not be given controlling weight. The collective objective medical evidence in the record shows that claimant is capable of performing simple, unskilled, sedentary/light work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application and claimant requested a hearing. Recently, the Social Security Administrative Law Judge denied her application for federal disability benefits.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled light work. Claimant's past work was janitorial.

The department thinks that claimant can perform unskilled light work.

The department denied MA-P/SDA due to lack of 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).

To determine to what degree claimant's 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 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 purposes. PEM 260. "Disability," as defined by MA-P 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.

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.

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 that is expected to result in death, or has existed for a continuous period of at least 12 months, thereby totally prevents all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P, 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 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as janitor for a local bar. Claimant's work as a janitor was light unskilled work.

Except for the medical source opinion, noted above, there is no evidence that claimant is unable to return to her previous work as a janitor.

Because claimant's medical source opinion (MSO) is not supported by the great weight of the evidence in the record, it will not be given controlling weight. 20 CFR 416.927(c) and 927(d). Since claimant is able to return to her previous work, 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 purposes.

First, claimant alleges disability based on a mental impairment: bipolar disorder and depression. The recent psychological report from the [REDACTED] [REDACTED] denied the following DSM diagnoses: Axis I—bipolar disorder, moderate severity, alcohol dependence, sustained full remission, nicotine dependence. The MA

social worker noted that claimant did not meet the requirement for services at that time. Also, claimant, claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functioning capacity.

Second, claimant alleges disability based on back dysfunction with pain. A recent medical examination (October 8, 2008) shows that claimant had a normal neuro, extremity and respiratory exam. At that time, the diagnosis was chronic low back pain, anxiety, asthma and hypertension. The only evidence in support of claimant's claim of total disability is the information supplied by her treating physician. However, this MSO cannot be given controlling weight because it is contrary to the great weight of the medical evidence in the record.

During the hearing, claimant testified that a major impediment to her return to work was her back pain, secondary to low back dysfunction. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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 combined impairments.

Claimant currently performs many Activities of Daily Living, has an active social life with her live-in partner.

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/light work (SGA). In this capacity, she is physically able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter at Walmart.

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 disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P application is, hereby, AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 30, 2009

Date Mailed: July 30, 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/sd

cc:

