

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: 2009-9599
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 9, 2009
Wayne 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 April 9, 2009 in Inkster. Claimant personally appeared and testified under oath.

The department was represented by Bobbie Thompson (Medical Contact Worker).

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/SDA applicant (September 6, 2008) who was denied by SHRT (January 14, 2008) based on claimant's failure to provide evidence of an impairment which meets the department's severity and duration requirements. SHRT requested that claimant provide recent hospital records and mental health records.

(2) Claimant's vocational factors are: age--60; education—high school diploma, post-high school education—2 semesters at [REDACTED] ([REDACTED]); work experience—timeshare salesperson, cashier for [REDACTED], substitute teacher for [REDACTED], customer service agent for [REDACTED]).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she was a timeshare salesperson.

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

- (a) Bipolar disorder;
- (b) Post traumatic stress disorder (PTSD);
- (c) Depression;
- (d) Status post heart attack;
- (e) Status post stent placement;
- (f) Status post right heel/ankle fracture;
- (g) Fibromyalgia;
- (h) Irritable bowel syndrome;
- (i) Chronic fatigue;
- (j) Status post cataract removal.

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

OBJECTIVE MEDICAL EVIDENCE (JANUARY 14, 2009)

A DHS-49 form, dated 10/2008, showed claimant had hypertension, angina, hyperlipidemia, right ankle pain and osteopenia. Claimant was 169 pounds. Blood pressure was 120/82. It was reported that claimant complained of chest pain. She had right ankle pain due to an old fracture and a depressed mood. A stress test was pending. The remainder of her exam was within normal limits (page 7). The doctor indicated claimant could occasionally lift 10 pounds and sit about 6 hours in an 8 hour day. There were no mental limitations (page 8).

ANALYSIS:

Claimant reported having a myocardial infarction (MI) and stenting. However, there is no information in the file to document this. The DHS-49 form indicated claimant had chest pain, but there is no clarification of the chest pain. The doctor stated a stress test was pending. The objective evidence also does not include any mental status information. On the DHS-1150, claimant also reported alcohol and drug dependency issues. On page 2 of the DHS-49B, the worker indicated claimant was currently receiving SDA and AMP benefits. It does need to be clarified if this claimant was already in benefits and this was a medical review of benefits, or if this was actually a new application. Additional information would be helpful in evaluating this claim.

* * *

(6) Claimant lives with his sister-in-law and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning (sometimes), mopping (sometimes), vacuuming (sometimes), laundry (sometimes), and grocery shopping (uses an electric cart)). Claimant does not use a cane or a walker. She uses an electric cart when she is grocery shopping. She does not use a shower stool, but she does wear a shoe boot on her right foot approximately 4 times a month. Claimant received inpatient hospital care on 3 occasions in 2008. Most recently, in April 2008, she was treated for memory dysfunction and depression.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant used the computer during the 18 years she worked for [REDACTED]. She does not currently have a computer.

(8) The following medical records are persuasive:
Claimant's medical evidence is summarized by SHRT in paragraph #5, above.

(9) There is no probative psychiatric evidence in this record to 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 she has bipolar disorder, post traumatic stress disorder and depression. However, claimant's concerns are not corroborated by the medical evidence. In fact, the October 16, 2008 Medical Examination Report (DHS-49) unequivocally states that claimant has no mental limitations. The DHS-49's dated January 30, 2007 and January 25, 2007 also report no mental limitations. Finally, claimant did not provide a DHS-49D or a 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. Claimant reported that she has angina, status post heart attack, status post stent placement, a fractured right heel/ankle, fibromyalgia, irritable bowel, chronic fatigue and status post cataract removal. The most recent DHS-49/Medical Examination Report reports hypertension, anxiety, hyperlipidemia, right leg and osteopenia. The impairments documented by the physician who submitted reports do not constitute a combination of impairments that totally preclude all employment. Claimant's impairments do limit the amount of time she can stand and walk. However, they do not totally preclude all work activities, especially sedentary work activities.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. She was initially denied by the Social Security Administration and filed a timely appeal. Claimant is scheduled for a second SSA hearing in May 2009.

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 additional medical evidence is necessary to assess the severity of claimant's impairments. The department is requesting the following additional information:

- (1) Clarification of whether or not this is a medical review.
- (2) Additional records describing claimant's heart attack and stenting in 2003.
- (3) Records on claimant's multiple hospitalizations in 2008 for heart and mental problems. The department would also like to review on its mental health records and the records from claimant's treating psychiatrist.

The department denied MA-P/SDA due to insufficient medical evidence.

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, histories 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 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, 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 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 that she has an impairment which is expected to result in death, or 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 timeshare salesperson. This work was light work. The medical evidence of record establishes that claimant has heart dysfunction and right ankle/foot dysfunction. Neither of these conditions totally preclude claimant from returning to work as a salesperson.

Therefore, claimant 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 a mental impairment (bipolar disorder, post traumatic stress disorder and depression). Claimant's allegations are not supported by the medical evidence in the record. The 3 Medical Examination Reports submitted by claimant all indicate that claimant

does not have a severe mental limitation. Also, claimant did not provide a DHS-49D or a DHS-49E to establish the parameters of her mental impairments as they relate to her residual functioning capacity.

Second, claimant alleges disability based on her heart dysfunction and her right foot/ankle fracture. Although claimant's documented impairments do preclude her from engaging in rigorous physical activity involving long periods of walking and standing, her currently documented physical impairments do not totally prevent her from performing all work activities. This is partially illustrated by the fact that claimant has recently applied to work with

[REDACTED]

Third, claimant testified that a major impediment to her return to work was her right ankle/foot pain in combination with her fibromyalgia 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 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 currently performs a significant number of activities of daily living, has an active social life with her sister-in-law and her grandchildren and drives an automobile 12 times a month.

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.

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 260/2261.

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 10, 2009

Date Mailed: August 11, 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:

