

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: 2009-9602
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 23, 2009
Oakland 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 23, 2009, in Madison Heights. Claimant personally appeared and testified under oath.

The department was represented by Michele Kramer (FIS).

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 (April 14, 2008) who was denied by SHRT (January 26, 2009) based on claimant's ability to perform unskilled work under 20 CFR 416.968(a).

(2) Claimant's vocational factors are: age—21; education—high school diploma; post high school education—currently taking courses at [REDACTED]; work experience—grocery bagger at [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since August 2007 when she worked as a grocery bagger for [REDACTED].

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

- (a) Poor comprehension;
- (b) Short-term memory dysfunction;
- (c) Chronic bedwetting;
- (d) Mild mental retardation.

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]

SHRT decided that claimant was able to perform normal unskilled work activities. SHRT evaluated claimant's eligibility using SSI Listings 12.04 and 12.05. SHRT decided that claimant did not meet any of the typical listings. SHRT denied disability based on 20 CFR 416.968(a) due to claimant's inability to perform normal unskilled work activities.

(6) Claimant lives with her mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker,

wheelchair or shower stool. She does not wear braces. Claimant did not receive inpatient hospital services in 2008 or 2009.

(7) Claimant has a valid driver's license and drives [REDACTED] approximately eight times a week. Claimant is taking two three credit courses at [REDACTED]. She has attended [REDACTED] for two semesters, but has not passed any courses yet.

(8) The following medical records are persuasive:

An [REDACTED] report was reviewed.

The Ph.D. psychologist provided the following history:

* * *

According to claimant and her mother, psychiatric symptoms began at birth when the mother's placenta separated. Claimant experienced fluid on the brain and subsequent brain damage seizures, which lead to developmental delays including the areas of math, reading and inter social skills. Records indicate claimant had been diagnosed as mildly mentally retarded before the age of 18. He currently receives treatment at [REDACTED] of [REDACTED] and is prescribed anti-depressants. She denies a history of substance abuse or arrests.

PERSONAL HISTORY:

* * *

Claimant denies a history of abuse or neglect. She has never been married and has no children. She now resides with her mother. The stress, worry and inability to maintain to her adult daily living needs are nonexistent. She is a high school graduate, through remedial education and much assistance from her mother, and has attempted to attend college, but cannot pass her classes. She works part-time when she can via [REDACTED] ([REDACTED]).

Claimant reports that she is currently residing with her mother because she has little income, no significant friends and needs assistance with daily living skills. For example: she is easily overwhelmed and calls her mother to reassure her while working

after everyday stresses. She is always afraid something will happen because she is not keeping up with others. In addition, she is incontinent of urine, especially at night. However, she can initially give the impression that she can function much higher and confabulates details if she does not know them. She states she does not really cook or clean, just makes things in the microwave. She reports she is unmotivated to cook, clean, vacuum, and dust, etc. She describes difficulty concentrating and attending to what she is doing, and often being confused and overwhelmed. She is not able to drive because she cannot concentrate due to her limited cognitive inability.

MENTAL STATUS:

Claimant was oriented to time, place and person. However, she has difficulty maintaining concentration, was easily distracted and that interfered with completing tasks. Often she has to be redirected in order to attend to her situation. However, she was pleasant and cooperative, and she attempted to do all tasks.

Claimant's speech was clear and goal-directed, but she shared information on a limited amount of subject matter, and she responded in a slow monotone voice which often required repeating responses to be heard, often fabricating details so as to follow correct response.

* * *

The claimant's psychologist provided the following diagnoses:

Axis I—Cognitive disorder, NOS.

Axis V—GAF—45.

(9) Claimant alleges the following mental impairments: cognitive disorder, difficulty with short-term memory tasks, developmental delays, including the areas of math, reading, and social skills. The [REDACTED] states that claimant's progress toward self sufficiency is from good to poor. She requires ongoing vocational intervention and psychological attention to function. However, the psychologist does not, unequivocally, state the claimant was totally unable to work. Claimant did not provide a DHS-49E or DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The psychological report in the record states that claimant has a chronic bedwetting condition. Claimant takes medications for this condition. Claimant did not provide a Medical Examination Report (DHS-49) to clarify which physical work activities she is unable to perform. There is no consensus in the record that claimant is totally unable to work due to her physical limitations. The record does indicate that claimant is unable to count change and handle her money. However, at this time, there is no reliable medical evidence to establish a severe, disabling physical condition that totally precludes all work activities.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security Administration denied her application; claimant filed a timely appeal.

(12) Claimant is currently receiving ongoing services from [REDACTED] [REDACTED]). Claimant has a job coach and applies for work on a regular basis.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is applying for MA-P/SDA based on the impairments listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform normal unskilled work activities. The department evaluated claimant's impairments by listing 12.04 and 12.05. The department decided that claimant does not meet any of the applicable listings.

Based on claimant's vocational profile, a younger individual, age 21, with a high school education and two semesters at [REDACTED], and work experience as a grocery bagger, the department denied disability benefits based on claimant's ability to perform normal work activities.

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 does 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 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/SDA status is a legal term which is individually determined by consideration of all factors in this 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 because of a 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 and duration. Claimant must establish 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, 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 perform her previous work. Claimant last worked as a grocery bagger for [REDACTED]. This was light work.

The medical evidence of record establishes that claimant has the physical capacity to perform the light work of a grocery bagger. Also, the psychological evidence does not preclude this type of work because it does not require a great deal of mental concentration or memory.

Since claimant is able to return to her previous work as a grocery bagger, 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 a preponderance of the medical/physical evidence on the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based a cognitive impairment, and a short- and long-term memory deficit. The consulting psychologist provided the following diagnosis: cognitive disorder, NOS. The evidence of record shows that claimant has difficulty remembering facts for taking tests at [REDACTED] and also has difficulty making change. However, the consulting psychologist did not state unequivocally, that claimant is totally unable to do any

work. Also, claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity. Finally, claimant is an ongoing client of the [REDACTED] [REDACTED] department and has a job coach who is helping her to find employment.

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 theater, as a greeter for [REDACTED] and as a grocery store bagger.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under Step 5 of the sequential analysis, above.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P/SDA disability, from 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: May 13, 2009

Date Mailed: May 14, 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:

