

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: 2009-14905
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 2009
Kent 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 Grand Rapids. Claimant personally appeared and testified under oath.

The department was represented by Amy Wright (FIM).

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 (October 31, 2008) who was denied by SHRT (March 16, 2009) based on claimant's ability to perform unskilled work. SHRT relied on Med-Voc Rule 203.28 as a guide. Claimant requests retro-MA for July, August and September 2008.

(2) Claimant's vocational factors are: age—28; education—high school diploma, post-high school education--none; work experience—substitute teacher for [REDACTED], odd jobs for senior citizens.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since October 2007 when she was a substitute teacher for [REDACTED].

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

- (a) Attempted suicide/depression;
- (b) Status post hospitalization for psychiatric issues;
- (c) Seizures;
- (d) Asthma.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 16, 2008)

SHRHT decided that claimant was able to perform unskilled work. SHRT evaluated claimant's disability using all SSI Listings in 20 CFR 406, Subpart P, Appendix. 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 work.

SHRT provided the following comments:

Claimant has a history of seizures, but had not been on medications for about 10 years. She had a possible seizure in 7/2008 and apparently was started back on medications. However, in 10/2008 claimant was seen in ER for another seizure. She reported that she had run out of her medications. Claimant's respiratory exam was unremarkable. She is capable of doing any work that does not required working around unprotected heights or dangerous moving machinery.

* * *

(6) Claimant lives with a friend and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping (sometimes). Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear any braces. Claimant did not receive inpatient hospital care in 2008 or 2009.

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

(8) The following medical records are persuasive:

(a) A [REDACTED]

[REDACTED] Evaluation was reviewed.

The psychiatrist provided the following background.

Claimant is a married, 26-year-old white female from [REDACTED]. Claimant was recently hospitalized at the [REDACTED] in [REDACTED] from [REDACTED] though [REDACTED] for treatment of severe symptoms of depression following an intention drug overdose in a suicide attempt.

* * *

Claimant was also found to have some hypothyroidism in addition to her hypertension, which is controlled on her medication. Claimant reports that she has been taking her Cymbalta regularly, as prescribed following her [REDACTED] discharge. She firmly denies any medication side effects. "I was really doing pretty good until about the last 5-6 days. My sleep has been really restless, and I have been having nightmares again. I toss and turn."

* * *

Claimant also continues to work part-time as a teacher's aide for a [REDACTED] program. Claimant is aware that she "needs to keep working on an issue. I've got a counseling appointment Friday (February 16, 2007)."

* * *

OBJECTIVE:

Claimant was neatly groomed and casually dressed. She established and maintained appropriate eye contact. Her speech was spontaneous and normally productive without blocking, looseness of associations today or ideas of reference. Her mood was more anxious and more dysthymic than when I last met her at the [REDACTED] on [REDACTED]. Her affect was reactive and mood-congruent. Concentration and motor activity were within normal limits without any evidence of abnormal involuntary movements. Her thought processes were concretistic but focused and future directed. There was no alteration in thought process or thought content. Claimant firmly and emphatically denied recent or current suicidal ideation. There was no evidence of homicidal ideation. She was oriented to person, place, time and situation. Memory was grossly intact for recent and remote events. Intellectual functioning was inferred to be within average range. Insight and judgment were good.

ASSESSMENT:

Axis I—Depressive Disorder, recurrent, severe without psychoses; probable post-traumatic stress disorder.

* * *

Axis V/GAF 53.

* * *

(b) An August 31, 2007 Progress Report was reviewed:

Physical exam:

Vital signs: stable. Temperature fafevrile.

* * *

Neurological: Cranial nerves II-VII are grossly intact. DTRs are +2/4 on all 4 extremities. Pin prick sensation present and equal bilaterally in upper and lower extremities. Fine

sensation intact in the fingertips and toes. Babinski's sign is negative. Romberg sign is negative.

ASSESSMENT:

- (1) Right plantar wart;
- (2) Debridment of the wart;
- (3) Migraine headaches.

* * *

(c) A [REDACTED] letter was reviewed.

The physician provided the following background:

I had the pleasure of seeing claimant in my [REDACTED] office for a follow-up visit regarding her allergies. As you know, she initially presented to me with years of allergy symptoms that she described as nasal congestion, post nasal drainage, rhinorrhea, recurrent sinus infection and problems with frequent sinus pressure and pain. She also had some itchy eyes and occasional exercise-induced asthma. She has had ear-popping, cracking and fullness in the past. Allergy skin testing did show some significant reactions to dust, cat, multiple molds, grasses, trees and weeds. Despite my efforts with multiple medications, Clarinex, Astelin and Pataday, she continued to have, and again has, symptoms of persistent congestion, rhinorrhea and significant itchy, watery eyes with the season.

* * *

My impression remains:

- (1) Perennial allergic rhinitis;
- (2) Recurrent sinusitis;
- (3) Allergic conjunctivitis.

* * *

(d) A [REDACTED] report was reviewed.

The physician provided the following diagnoses:

- (1) Abnormal laboratory test;
- (2) Headaches;
- (3) Seizures;
- (4) Abdominal pain.

(9) The probative psychiatric evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The report provided by the psychiatrist states that claimant has a diagnosis called Depressive Disorder, probable post-traumatic stress disorder, Axis V/GAF score of 53. He did not report that claimant was totally unable to work. 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. The medical records do show the following diagnoses: (1) Right plantar wart; (2) Debridment of the wart; (3) Migraine headaches; (4) Perennial allergic rhinitis; (5) Recurrent sinusitis; (6) Allergic conjunctivitis. Claimant's physicians did not say that she was totally unable to work.

(11) Claimant was on Social Security benefits between 1998 and 1999. Her benefits were terminated.

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 has the Residual Functional Capacity (RFC) to perform unskilled work. The department relies on Med-Voc Rule 203.28 as a guide.

The department notes that claimant has not been taking her medications for about 10 years. She recently had a seizure in July 2008 and a second in October 2008. Claimant's

respiratory exam was unremarkable. Claimant is capable of doing any work that does not require working around unprotected heights or dangerous moving machinery.

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 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 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 disability test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a teacher for [REDACTED]. This work was sedentary work. The medical evidence of record establishes that claimant had a seizure in July and October 2008. Claimant also has allergies. Claimant was hospitalized for severe depression in 2007, as well.

Claimant's combined impairments do not prevent her from performing unskilled work. Since her previous work as a substitute teacher for [REDACTED] was unskilled work, she is able to return to this work.

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 disability based on depression. The psychological report in the record shows that claimant's mental condition is not currently a severe impairment. The consulting psychiatrist provided the following diagnoses: Depressive disorder, recurrent and severe; probable post-traumatic stress disorder.

Axis V/GAF-53. The psychiatrist did not report that claimant is totally unable to work. Also, claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functioning capacity.

Second, claimant alleges disability based on a combination of physical impairments: migraine headaches, allergies, rhinitis and recurrent sinusitis. Claimant is on medication for these conditions. Claimant's physician did not state that she is totally unable to work. She is unable to work around unprotected heights or dangerous moving machinery.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her pain.

Claimant performs an extensive list of activities of daily living and 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 able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

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 14, 2009

Date Mailed: September 15, 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

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