

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: 2009-16729
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 9, 2009
Iosco 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 9, 2009 in East Tawas. Claimant personally appeared and testified under oath.

The department was represented by Carol Martin (ES).

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 (August 5, 2008) who was denied by SHRT (April 14, 2009) due to claimant's ability to perform medium unskilled work. SHRT relied on Med-Voc Rule 203.15 as a guide. Claimant requests retro-MA for May, June and July 2008.

(2) Claimant's vocational factors are: age--59; education—high school diploma, post-high school education--none; work experience—waitress at an ice cream store, cook at a restaurant and medical records clerk for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when she worked as a waitress at an ice cream store.

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

- (a) Vision impairments in both eyes;
- (b) Reduced ability to lift;
- (c) Shortness of breath;
- (d) Panic attacks;
- (e) Depression;
- (f) Back dysfunction;
- (g) Degenerative disc disease.

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

OBJECTIVE MEDICAL EVIDENCE (APRIL 14, 2009)

SHRT decided that the claimant is able to perform unskilled medium work. SHRT evaluated claimant's disability using all SSI Listings at 20 CFR 404, Subpart P, Appendix. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability based on 20 CFR 416.967(c) and 20 CFR .968(a) due to claimant's ability to perform unskilled work. SHRT provided the following additional comments: Medical opinion is considered under 20 CFR 416.927. Claimant is able to maintain many activities despite her vision impairment.

* * *

(6) Claimant lives with her 90 year-old mother. Claimant provides light chore services for her mother. In addition, claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning (sometimes), vacuuming, laundry and grocery shopping. Claimant wears thick glasses and is able to read sometimes and to watch television. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant did not have inpatient hospital care in 2008 or 2009.

(7) Claimant has a valid driver's license and drives an automobile approximately 4 times a week. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED]
Internal Medicine report was reviewed.

The physician provided the following background:

Chief Complaint—vision loss.

Claimant has had a history of vision loss over the past year. She states she was diagnosed one week ago with cataracts, but states that she has always had problems with her eyes since she was a child. She states her right eye is more involved than the left. She has not seen a physician at this point, but does wear glasses.

Claimant has not worked since 2003. She used to work in food service but stopped because of her eyes. She now lives with her ex-husband who has been supporting her at home. She does do household chores and activities of daily living. She is able to drive, cook and shop. She still can occasionally read, play bingo, and goes to the Eagles once a week for socializing. She has no problem sitting or walking, but states she cannot stand long. She cannot lift anything more than 10 pounds and cannot lift above her head.

* * *

SOCIAL HISTORY: Tobacco: Claimant smokes one pack of cigarettes per day for 40 years.

* * *

The physician provided the following conclusions:

(1) Vision loss.

Claimant did have significant vision loss in the right eye with a medial gaze deficit; most likely congenital. She does have bilateral immature cataracts, which is contributing to her disease process. Surprisingly, she is still able to drive. She was able to navigate around the room and was able to find small objects. At this point, she would be remediable, at least to have cataract extracted in the left eye as this is her dependent eye.

* * *

SOCIAL HISTORY: Tobacco: Claimant smokes one pack of cigarettes per day for 40 years.

* * *

(b) An [REDACTED] psychological assessment was reviewed. The PhD psychologist provided the following background:

Claimant's complaints and symptoms involve her medical problems, a depressive disorder and social anxiety disorder. When she was asked to describe her status she said, "My vision is my main problem. I'm losing my vision in my right eye. I also think I have a cataract in my left eye. Everything is wavy and blurry in my right eye. Everything is distorted in my right eye. I have a genetic disease and I have had it since birth. My left eye is programmed for distance and my right eye is for up close vision. I've done this all my life. I have to hold something close to my eyes, like about 6 inches away, to see to read it. My left eye is for distance, but I have to be close to road signs just to see them and read them.

I have trouble lifting things. I can lift a gallon of milk okay, but it's a little heavy. I can't lift a 20 pound bag of dog food. It's because of muscle disease that I've had. I have panic attacks. I get shortness of breath and sweating and shaking. I get hot and sweaty; my heart races; I feel dizzy. A few times I felt light-headed like I was going to pass-out. I've had them in stores. I've had them in crowds of people. I've had them driving. Most of them I have in

stores where there's people around me. If I go too far in the store, I worry about how to get out and where's the exit.

* * *

I feel depressed. I'm depressed because I can't do what I want. I have no energy. I feel tired most of the time. I don't sleep well. Lately, I've had to force myself to do things. I have no motivation. I feel useless. I lost my girlfriend about 2 years ago. The depression has gotten worse in the last 2 years. I am lost without my friend. She was my rock.

* * *

The PhD psychologist provided the following work history:

Regarding her work history, the client said, "My first job was working at [REDACTED]. I worked in medical records. I only worked for them for 30 days. It was in 1968. The work situation was segregated. I didn't like most of the girls because they were snobs. I made friends with one black girl and that did it. I always worked in offices. All of them were short term jobs. Five years was the longest. I am not working now. About 3 years ago I worked part-time at our little ice cream parlor. I worked one week at a restaurant in [REDACTED], but she realized I couldn't lift stuff so she let me go."

* * *

Activities:

Regarding the home chores, the client said, "I basically live alone. My ex-husband will come and visit with me about every 3 weeks. I do dishes, vacuuming, cooking.

The PhD psychologist provided the following DSM diagnoses:

Axis I—Major depression ,single episode, moderate; social anxiety disorder.

* * *

Axis V/GAF—50.

- (c) An October 28, 2008 Mental Residual Functional Capacity Assessment was reviewed. The PhD psychologist provided the following information. Skill sets which are **moderately limited**—(6) the ability to maintain concentration and concentration for extended periods. (19) the ability to travel in unfamiliar places. Skill sets which are **markedly limited**: (12) the ability to interact appropriately with the general public. The PhD psychologist did not report that claimant is totally unable to work.

(9) The probative psychological 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. Claimant thinks she has depression and panic attacks. Claimant's concerns are not corroborated by the October 28, 2008 PhD psychological evaluation. The psychologist provided the following diagnoses: Major depression, single episode and social anxiety disorder. Claimant's Axis V/GAF score is 50. The consulting psychologist did not state that claimant was totally unable to work due to her mental impairments. Claimant did provide a DHS-49E. The mental residual functional capacity assessment shows 2 moderately limited skill sets and 1 markedly limited skill set.

(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 thinks she has impaired bilateral vision, shortness of breath, back dysfunction and degenerative disc disease. Claimant's concerns are not corroborated by the consulting internist. The medical consultant reported that claimant has major vision loss in her right eye and cataracts in her right and left eyes. The physician did not say that claimant is totally unable to work due to her physical impairments.

(11) Claimant has not applied for federal disability benefits with the Social Security Administration.

(12) Claimant is currently smoking one pack of cigarettes per day against medical advice. Her physician has recommended that she quit smoking.

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 medium work.

The department acknowledges that claimant's vision impairment does preclude skilled work. However, claimant is able to perform unskilled, medium work.

The department evaluated claimant's eligibility using all SSI Listings in 20 CFR 404, Subpart P, Appendix.

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, 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/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(c).

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 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 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.

However, SHRT evaluated claimant's disability based on all of the SSI Listings in 20 CFR 404, Subpart P, Appendix.

Claimant does not meet the applicable 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 waitress at an ice cream store. The medical evidence in the record, does not establish that claimant is unable to return to her work as a waitress at an ice cream store. 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 a preponderance of the medical 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 a mental impairment: depression and panic attacks. The consulting PhD psychologist's report in the record shows that claimant's mental condition is not a severe impairment. The consulting psychologist reports the following diagnoses: (1) Major depression, single episode, moderate and (2) Social anxiety disorder. Claimant has an Axis V/GAF score of 50. The consulting psychologist did not report that claimant is totally unable to work based on her mental impairments. The DHS-49E provided by the consulting psychologist shows 2 skill sets with moderate limitations and 1 skill set with marked limitation.

Second, claimant alleges disability based on bilateral vision impairments, shortness of breath, back dysfunction, degenerative disc disease, and a reduced ability to lift. The internal medicine consultant provided the following diagnoses: Vision loss. He reports that claimant has a significant vision loss in the right eye and bilateral immature cataracts in both eyes. The consulting internist did not say that claimant was totally unable to work based on her physical impairments.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Claimant performs an extensive list of Activities of Daily Living, has an active social life with her mother, her daughter and her ex-husband, and is able to drive approximately 4 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 at [REDACTED]. Due to the handicapper laws recently enacted in the United States, there are many persons with severe vision loss who are able to work.

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

Finally, the Administrative Law Judge is not able to award disability benefits to claimant because she is acting against the advice of her medical providers. Claimant continues to smoke, even though her physician has recommended that she quit.

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.

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.

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

Date Signed: September 17, 2009


Date Mailed: September 19, 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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