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: 2009-17944
Issue No: 2009
Case No: [redacted]
Load No: [redacted]
Hearing Date:
June 10, 2009
Ionia 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 10, 2009 in Ionia. Claimant personally appeared and testified under oath. Cliamant was represented by [redacted].

The department was represented by Steve Speiser (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 applicant (October 10, 2008) who was denied by SHRT (April 16, 2009) based on claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age—49; education—high school diploma, post-high school education—attended [redacted] for 2 semesters ([redacted]); work experience—nurse aide for [redacted].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when she worked as a nurse aide providing direct home care.

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

(a) Status post left hand injury ([redacted]);
(b) Depression;
(c) Panic attacks;
(d) Chronic fatigue and low energy;
(e) Wants to be alone.

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

OBJECTIVE MEDICAL EVIDENCE (APRIL 16, 2009)

> SHRT decided that claimant is able to perform unskilled medium work. SHRT evaluated claimant's impairments using all SSI Listings in 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 416.968(c).

(6) Claimant lives with her 16 year-old son and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient hospital care in 2009 for syncope and anxiety.

(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) A [redacted] was reviewed. The physician provided the following history:

> This is a 48-year-old female who presented to the emergency department on [redacted] stating she had been at a friend's house watching the [redacted] when she began to feel funny, became sweaty and tried to cool herself down in the bathroom by splashing water on her face and proceeded to fall in the bathroom. No seizure activity was noted, however, claimant did admit to losing her urine during the episode. She regained consciousness shortly thereafter with complaints of pain in her ribs, left side, and left wrist, secondary to falling into the bathroom sink. She had no headaches or other focal neurologic symptoms. No vision changes. All imaging done in the [redacted] listed as above was unremarkable. A dimar was obtained which came back elevated at 1226 with a negative CT of her lungs. Her vital signs were stable in the [redacted]. Claimant was transferred to the medicine floor in stable condition for observation.
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> The physician provided the following discharge diagnosis:
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> (1) Syncope (fainting spells);
> (2) Type II diabetes mellitus;
> (3) Anxiety and depression;
> (4) Hypercholesterolemia;
> (5) Hypertension.

(b) A [redacted] report was reviewed.

The physician provided the following background:

Claimant is a 48-year-old female with diabetes and carpal tunnel syndrome. Claimant was diagnosed with diabetes in 1997. She checks her sugars daily. They average between 130 and 140. She says she was untreated for 2 years, but is now currently taking Glucophage and Gliviside for her blood sugar control. Claimant also has a history of hypertension. She denies history of retinopathy and neuropathy, although she describes her symptoms of neuropathy in the hands and feet, described as numbness, tingling and burning. She denies ulcerations on the extremities. She does, however, state that she has a callus on the left foot which causes her difficulty in ambulation.

Claimant was also diagnosed with carpal tunnel syndrome bilaterally in 2004. She has had surgery on the left hand. She is left hand dominant. She describes decreased grip as characterized as "decreased endurance" when holding objects. She also describes sensations of burning and the hands being asleep. She also describes intermittent swelling of the hands.

* * *

SOCIAL HISTORY:

Claimant smokes a half-a-pack per day and has been smoking for 30 years. She does not drink alcohol. She was formally employed as a [redacted]) in [redacted]. She completed one and one-half years in college. She can read and write and is left-hand dominate.

* * *

The physician provided the following conclusion:

A 48-year-old female with a history of diabetes and carpal tunnel syndrome.

Today, on physical examination, there is a sensory deficit in the left lower extremity. Also noted was a callus on the left foot which causes a mild left-sided limp.

There is a positive phalen examination of the left wrist, but dexterity and strength of the hands is preserved. There is weakness within the left dorsifelexors of the wrist.

* * *

(c) A [redacted] review was reviewed.

The psychiatrist provided the following subjective information:

Claimant is seen in follow-up for dysthymia, as well as Major Depressive Disorder, recurrent with psychoses; and probable borderline personality disorder. she continues on Paxil 20 mg 3 times a day, Klonopin .05 mg every morning and Seroquel 100 mg at bedtime. She is currently on no other medications.

Claimant states that she feels about the same. She describes multiple interpersonal stressors. She is having a difficult time with her relationship with her grown daughters, as well as her boyfriend. She is currently seeing her therapist 2 times a month to discuss these issues. She is still somewhat resistant to starting [redacted] group. She is sleeping well. Her appetite is stable. She does enjoy some activities. She is able to do household chores without difficulty. She recently went to a concert and enjoyed it. She does not feel suicidal, although she would not care if she were to die as she is starting struggling with relationship issues. She has not engaged in any self harm. She does describe, at times, feeling detached.

* * *

Claimant has still not returned to her medical physician and has not checked her blood sugar. She has a number to call regarding the [redacted], but has not done so. I reviewed with her, again the importance of doing so, especially with Seroquel. The psychiatrist provided the following diagnoses:

Axis I—Dystymia; major depressive disorder; recurrent with psychoses, according to the records.

Axis V/GAF—unknown;

(d) An [redacted] Progress Note was reviewed.

The [redacted] in her study provided the following information:

Identified goal: Employment.

Progress Note: Claimant called to tell me that she talked to [redacted]. She is pretty sure she would be able to get a job there in the very near future. She asked if [redacted] would pay for clothing for this new job, since she had little or no appropriate outfits for working in the cherry/apple fields. I assured her we would take care of whatever she needed, as long as it related to her job. Praised her for persistence in following-up with employers.

* * *

(e) A [redacted] was reviewed. The following diagnoses were provided by the clinical team:

(a) Axis I—Major depressive disorder, recurrent with psychotic features;
(b) Panic disorder without agoraphobia;
(c) Post traumatic stress disorder;
(d) Axis V/GAf—55.

(f) A [redacted] was considered.

The psychiatrist provided the following background:

Claimant reports she is doing much better now that she has been taking her medications every single day without fail, as prescribed. She reports that her anxiety is much improved. She still has some anxiety. She has had some significant family problems including her grandbaby being taken from the custody of her daughter. She was "devastated" when this first happened. However, she reports that she did some things much differently this time around than she has historically. She reports that rather than getting "devastated" and "losing control" going to the hospital acting irrationally or taking matters into her own hands, such as trying to find a person who had her grandbaby, she decided to get an attorney. She also decided to "gain control of her life". She states she did not give up. She reports that she would have

> attempted suicide in the past. She says she did not even think about suicide this time around. She reports that she has been able to help her daughter by being there for her daughter. She reports that she was following the advice of her attorney. She has been keeping her appointments with her therapist as developing skills. She has been taking her medications as prescribed. She is reporting that she is sleeping consistently 4 to 5 hours every night.
>
> * * *
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> The physician provided the following assessment:
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> Axis I—Major depressive disorder, recurrent, mild; rule-out dysthymia.
>
> * * *

(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 psychiatric evidence of record. In a September 9, 2008 Medication Review shows a diagnosis of dysthymia and major depressive disorder, recurrent, with psychosis. The recent psychiatric reports do not state that claimant is totally unable to work due to her mental impairments. Claimant did not provide a current 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 testified that she has chronic fatigue and problems caring for her diabetes. A recent [redacted]) shows a diagnosis of syncope (fainting), type II diabetes mellitus, Hypercholesterolemia and hypertension. The [redacted] does not state that claimant is totally unable to work based on her physical impairments.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Her application is currently pending.

(12) Claimant is acting against medical AMA advice by continuing to smoke one pack of cigarettes per day, even though this exacerbates her diabetes and other medical conditions.

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 medium work. The department evaluated claimant's impairments using all the SSI Listings in 20 CFR 406, 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).

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 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 disabled for MA-P purposes.

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 which is expected to result in death, or has existed for at least 12 months, and totally prevents all basic 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.

However, SHRT evaluated claimant's eligibility under all SSI Listings in 20 CFR 404, Subpart P, Appendix. Claimant does not meet any of 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 direct care chore services provider. This was medium/heavy work.

The medical evidence of record shows that claimant has vertal diabetes and chronic fatigue. Claimant is unable to return to her previous work as a chore services provider. Therefore, claimant meets 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 evidence in the record, that his combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges a mental impairment: depression, anxiety and panic attacks. The psychiatric reports show that claimant's condition has been labile. The medical record also shows that when claimant takes her psychotropic medications consistently and according to doctor's orders, she improves significantly.

The medical evidence of record does not establish that claimant's back condition is so severe that he is totally unable to do any work. A recent [redacted] shows Axis I diagnosis—major depressive disorder, recurrent with psychotic features, panic disorder without agoraphobia; post traumatic stress disorder. Claimant has a GAF score of 55 (moderate). The [redacted] clinicians do not state, consistently, that claimant is totally unable to work. In fact, [redacted] records dated August 20, 2008 state that claimant is applying for employment, and expects to be hired shortly. Also, claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on chronic fatigue and brittle diabetes. A recent [redacted]) provides the following guidelines provide the following diagnoses:

(1) Syncope (fainting);
(2) Type II diabetes;
(3) Anxiety/depression;
(4) Hypercholesterolemia;
(5) Hypertension.

Although claimant is suffering from fatigue and is precluded from heavy lifting, the medical evidence of record does not show that claimant is totally unable to perform any work.

Third, claimant testified that a major impediment to her return to work was her all-over body pain and legs that give-out. 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 combination of impairments. Claimant currently performs an extensive list of activities of daily living, has an active social life with her 16 year-old son and daughter and drives an automobile.

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.

Finally, the Administrative Law Judge is not able to award disability benefits to claimant because she is acting against medical advice by continuing to smoke.

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 260/261.

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: September 21, 2009

Date Mailed: September 21, 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: [redacted]