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: 2009-20526
Issue No: 2009; 4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
June 23, 2009
Gladwin 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 23, 2009 in Gladwin. Claimant personally testified under oath.

The department was represented by Valerie Boke (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit a SHRT psychological exam. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on July 23, 2009. Claimant waived the timeliness requirements so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

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 (January 9, 2009) who was denied by SHRT (May 12, 2009) due to insufficient evidence.

(2) Claimant's vocational factors are: age—31; education—10th grade; post high school education—GED; work experience—kitchen helper and cashier at [redacted].

(3) Claimant has not performed substantial gainful activities since she was employed by [redacted] as a kitchen helper and cashier.

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

(a) Seizure;
(b) Bipolar disorder;
(c) Post-traumatic stress disorder.

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

OBJECTIVE MEDICAL EVIDENCE (May 12, 2009)

> SHRT decided that claimant did not establish a disability due to lack of probative evidence. SHRT decided that claimant should provide a mental status evaluation from a psychiatrist or Ph.D. psychologist. SHRT denied disability based on claimant's failure to establish probative medical evidence in support of claimant's disability.

(6) Claimant lives with her live-in partner (LIP) and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (needs help), dishwashing, light cleaning, mopping, vacuuming, laundry (needs help) and grocery shopping (needs help).

Claimant does not use a cane, walker, wheelchair or shower stool. She does not wear braces.

Claimant did not receive inpatient hospital care in 2008 or 2009.

(7) Claimant does not have a valid driver's license and does not drive an automobile.

Claimant is computer literate.

(8) The following medical reports are persuasive:

(a) An October 2, 2008 psychiatric evaluation was reviewed. The following history was presented by the consulting psychiatrist:

> Claimant describes a very erratic life with multiple moods, abusive childhood and abusive relationships, currently with severe depression, frequent suicidal ideation, but no intent or plan and severe insomnia, initial and middle type. She feels comfortable in a homosexual relationship of nine months, with a supportive partner, but with additional difficulties of homelessness, since her partner's family evicted them after the death of the partner's mother. They applied for assistive housing, but it might take another week until they find out if they are qualified. Physical symptoms add to the distress of the psychological symptoms at this time.
>
> Past Psychiatric History:
>
> It is remarkable for claimant has never been seen by a psychiatrist, and never being in a psychiatric hospital. She states that she attempted suicide on several occasions, like cutting her wrists and being in the bathtub last year by taking an overdose, by driving her car into a brick wall or by drinking bleach to the point of having a stomach bleed. She states that she was seen by ER, but has never been into a psychiatric hospital. Claimant denies ever experiencing homicidal ideation or hallucinations. Claimant reports that she lived with several abusive boyfriends, many of them broke her jaw, her face, the top of the foot or both arms and one of them tried to shoot her with a gun. Claimant describes that last year her boyfriend of six years hit her in the head with a half an inch pipe causing a minor laceration, loss of consciousness and seizure with four episodes since. Currently, she takes Tegretol to treat the

seizures, and has a neurological appointment scheduled for [redacted]

PAST MEDICAL HISTORY:

It is remarkable for chronic pain with frequent injuries, as result of abuse, COPD, and recent staph infection in her arm pit and seizure disorder.

* * *

MENTAL STATUS EXAMINATION:

Claimant is casually dress, well groomed. Her psychomotor activity is slightly restless and fidgeting. Her eye contact is with a down-looking gaze. Her speech is somewhat rough, loud and inappropriate at times. She does not appear to respond to internal stimuli. She denies ever experiencing auditory hallucinations. She admits to occasional suicidal ideation but no imminent plan or intent and a history of suicidal attempts.

* * *

IMPRESSION:

This is a young woman who has significant psychiatric history and abused during her childhood years, as well as in various relationships, and had multiple moods and has complicating medical problems requiring significant medical care, who was just recently evicted from her house, and does not have a stable situation as of now. Her response to the current medication has been insufficient and a confounding factor includes her use of highly caffeinated beverages throughout the day and night.

DIAGNOSES:

Axis I Mood disorder, NOS, caffeinated beverages abuse, rule out impulse control disorder due to traumatic brain injury, history of alcohol abuse, impartial remission, history of marijuana abuse and nicotine dependency.

Axis V/GAF—35.

(b) A [redacted] report was reviewed.

> The physician provided the following history: Claimant states she has a history of seizures since last June when she had a closed head injury. She states she has been on Dilantin and Tegretol. She has not had any of these in the past three weeks. She states she recently switched to a new physician in Kalamazoo. They wanted to start a full workup before prescribing her seizure medications again. She states that she is having multiple seizures per day, up to three or four. She does have a friend in the room who describes the seizures as claimant having episodes of tremors. They last one-two minutes. Claimant is slightly postical afterwards. No incontinence of stool or urine. Claimant did have seizures as a child. She does have a family history of seizures. She states that after the seizures she has a knot in the left side of her scalp. This resolved after several hours. She had a seizure again tonight. EMS was called.
>
> * * *
>
> Claimant on my examination, is pleasant. States that she is frustrated by difficulty when establishing primary care.
>
> ORIGINAL DIAGNOSES:
>
> (1) Acute seizure;
> (2) Acute cephalgia.
>
> * * *

(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. Claimant thinks she has bipolar disorder and post-traumatic stress disorder. A recent psychiatric evaluation by a consulting psychiatrist provided the following diagnoses: mood disorder, NOS, caffeinated beverages abuse, rule out impulse control disorder due to traumatic brain injury, history of alcohol abuse in partial remission, history of marijuana abuse and nicotine dependency. The consulting psychiatrist did not state that claimant is totally unable to work based on her mental impairments.

(10) The medical records show a history of seizures. The [redacted] physician [redacted]. report provided the following diagnoses:

(1) Acute seizures;
(2) Acute cephalgia.

The physician did not state that claimant was totally unable to work based on her physical impairments. Claimant is precluded from driving and working at extended heights.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the impairments listed in Paragraph 4.

DEPARTMENT'S POSITION

The department thinks that claimant's medical records are insufficient to establish a disability.

SHRT requested a mental status evaluation by a consulting psychiatrist or psychologist.

LEGAL BASIS

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;
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> (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 <u>not</u> 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 standards is a legal term which is individually determined by 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/SDA 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 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 established an impairment which is expected to result in death, has lasted 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 do her previous work. Claimant last worked as a cashier and kitchen helper for [redacted]. This was light work.

The medical evidence of record establishes that claimant has a history of seizures and post-traumatic stress disorder and bipolar disorder.

The evidence of record does not establish that claimant is no longer able to work at her prior position at [redacted].

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, the claimant alleges disability based on mental impairments: post-traumatic stress disorder and bipolar. The psychiatric evaluation, dated October 2, 2008, by a consulting psychiatrist, states a diagnosis of mood disorder, caffeinated beverages abuse, rule out impulse control disorder, history of marijuana abuse and nicotine dependency. The consulting psychiatrist did not state that claimant is totally unable to work. Also, claimant did not provide a DHS-49D or 49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on history of seizures. Claimant was evaluated by a [redacted] physician in [redacted]. His professional diagnosis was: acute seizure disorder and acute cephalgia. The physician did not state that claimant was totally unable 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 performs a significant number of activities of daily living, has an active social life with her LIP, 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. In this capacity, she is able to work as a ticket taker for a theater, as a parking lot attendant and as a greeter for [redacted].

Claimant testified at the hearing that she recently applied for work at a [redacted] gas station and at a local grocery store. She thinks she is able to work as a cashier.

Finally, the Administrative Law Judge is not able to award claimant disability benefits due to the fact that she is acting against medical advice by continuing to smoke contrary to medical advice regarding the treatment of her seizure disorder.

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: October 5, 2009

Date Mailed: October 5, 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: [redacted]