

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: 200924536
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on July 22, 2009.

ISSUE

Was the denial of claimant's application for MA-P, Retro MA-P, and SDA for lack of disability correct?

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 applied for MA-P, Retro-MA-P, and SDA on November 17, 2008.
- (2) Claimant is 46 years old.
- (3) Claimant has a high school education and some college education.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history of semi-skilled work consisting of a cashier, an assistant supervisor at a factory, and a restaurant manager.
- (6) Claimant terminated her most recent job as a cashier because of black outs and panic attacks.
- (7) Claimant has a history of chronic headaches, severe migraines, anxiety attacks, conversion disorder, hypertension, panic attacks, and numbness on the right side of her body.
- (8) Records of these symptoms date back to April, 2008.
- (9) Claimant takes medications for these symptoms, including Vicodin, Depakote, Alprazolam, and Metoprolol.
- (10) A CT scan of claimant's brain was unremarkable and showed no signs of intracranial hemorrhage or mass affect.
- (11) A form DHS-49, Medical Examination Report, was completed by claimant's treating source.
- (12) Claimant's functional capacity is limited and only retains the capacity to lift 10 lbs or less occasionally, is not to lift any weight heavier than 10 lbs; retains the capacity to stand or walk for at least 2 hours in an 8 hour day; retains the capacity to engage in simple grasping only with her left hand/arm; is only able to operate foot/leg control with her left foot; and has a deteriorating condition.
- (13) Claimant's treating source certified that claimant is unable to return to work until further evaluation, dated [REDACTED].
- (14) A psychological exam conducted by an independent Department examiner diagnosed claimant with panic disorder with agoraphobia, generalized anxiety

disorder, conversion disorder with motor symptoms or deficits, and migraines, stating that claimant's symptoms prevent her from completing multi-step tasks and interacting with the public. The independent Department examiner also noted that absenteeism should be expected due to panic attacks.

- (15) Claimant was given a GAF of 50 with a guarded prognosis.
- (16) On March 25, 2009, the Medical Review Team denied MA-P, Retro-MA-P and SDA, stating that claimant was capable of performing other work under the Medical/Vocational Grid Rule 202.17 found at 20 CFR 416.920(f).
- (17) On April 7, 2009, claimant filed for hearing.
- (18) On June 17, 2009, the State Hearing Review Team denied MA-P, Retro MA-P, and SDA, stating that claimant was capable of performing other work.
- (19) SHRT concluded that claimant was capable of performing a wide range of simple, unskilled medium work, denying claimant's MA-P under vocational rule 203.29.
- (20) On July 22, 2009, a hearing was held before the Administrative Law Judge.
- (21) Claimant was unrepresented.
- (22) Claimant was given additional time to submit new evidence.
- (23) No new evidence was submitted.

CONCLUSIONS OF LAW

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).

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).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The

amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of an anxiety disorder, hyperventilation, a conversion disorder, a panic disorder, and numbness on the right side of her body, according to the great weight of the evidence by an independent Department examiner, and claimant’s treating sources. These issues have lasted more than the 12 month requirement, and show no signs of abating in the future. These issues affect claimant’s abilities to engage in basic work activities. The Administrative Law Judge finds that this is a significant impairment to claimant’s ability to engage in SGA, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant’s impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of “not disabled”; if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

After a review of listings 12.06 (anxiety disorders) and 12.07 (somatoform disorders), the Administrative Law Judge finds that the claimant’s medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. While claimant meets the

“A” part of each listing, a review of the submitted medical records shows that there is no evidence that claimant fully meets the “B” part of each listing, despite having marked difficulties in maintaining concentration, persistence, and pace. Claimant’s symptoms do not appear to rise to the marked level in the other categories of the “B” listing necessary to make a finding of disability. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant’s vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual’s residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

- 1) the individual has the functional and vocational capacity to for other work, considering the individual’s age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
- 2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant’s functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an

evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at her PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptom, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, the claimant's medical records indicate some functional limitations. On [REDACTED] who treated claimant since [REDACTED], completed a form DHS-49, Medical Examination Report. [REDACTED] reported that claimant should never lift or carry objects more than 10 lbs; claimant is able to stand or walk for at least 2 hours in an 8 hour day; and claimant is able to sit about 6 hours in a 8 hour day. [REDACTED] also reported that claimant is only able to conduct simple grasping with her left hand, able to reach, pull, and push with both hands, but unable to conduct fine manipulation with either hand.

Claimant is left handed. Finally, [REDACTED] reported that claimant is only able to operate foot/leg control with her left leg, and claimant has a deteriorating condition.

From this report, the Administrative Law Judge concludes that claimant has some limitations when considering the functions of carrying and lifting. Furthermore, claimant has difficulties when manipulating fine objects. Claimant has some limitations in walking and standing, but no limitations on sitting. Claimant should avoid climbing. Claimant has few or no postural limitations (e.g. stooping), visual limitations or communicative (hearing, speaking) limitations.

Additionally, the evidence presented indicates that claimant's medications have more than a nominal impact on claimant's ability to perform basic work functions. The evidence indicates that claimant takes [REDACTED]; [REDACTED] in the amount of 50mg; [REDACTED] in the amount of 500mg; and [REDACTED]. All three of these medications have common side effects of dizziness. These medications are known to severely limit an individual's ability to maintain concentration, persistence, pace, and can affect the ability to sustain gainful activity. Claimant has reported this side effect. Claimant has been restricted from driving while taking the medications, due to the side effects. Claimant's medical treatment plan approved by her doctor includes taking the medications.

Furthermore, on March 4, 2009, an independent Department examiner conducted a psychological evaluation of claimant and diagnosed claimant with panic disorder with agoraphobia, generalized anxiety disorder, conversion disorder with motor symptoms or deficit, and migraines. The independent Department examiner gave claimant a GAF of 50 with a guarded prognosis, and noted that claimant will have difficulty staying focused and concentrating on multi-step tasks due to excessive worry and physical symptoms supported by

anxiety. The independent Department examiner also noted that claimant should only secure jobs with minimal interactions with the public.

The Administrative Law Judge therefore concludes that claimant also has functional limitations resulting from her symptoms and medications that affect her ability to execute and remember multi-step instructions, and maintain concentration, persistence and pace.

Claimant's PRW includes working as a cashier at a convenience store, an assistant supervisor at a factory, and a restaurant manager. These jobs as typically performed and, as described by the claimant, involve interaction with the general public. Other jobs, such as a cashier, require maintaining concentration, persistence and pace. Therefore, given the functional requirements as stated by claimant (which is consistent with how these jobs are typically performed) for each of those jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does not retain the capacity to perform her past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional **and nonexertional functions** required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204 et. seq*) to make a determination as to disability. They reflect the analysis of the various vocational factors

(i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is forty-six years old, with a high school education and minimal college education and prior work experience performed at the light and medium exertional levels. Claimant's exertional impairments likely render claimant able to perform work at the sedentary level; claimant has some limitations on walking, no limitations on sitting, and claimant can lift and carry objects weighing 10 lbs or less.

However, claimant's ability to *perform* work at the sedentary level in no way is a judgment of residual functional capacity. RFC is an assessment of an individual's ability to do **sustained** work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule.

Furthermore, this is only a judgment of exertional limitations. The rules state that exertional limitations must first be considered to determine disability solely on strength factors;

if those prove inconclusive, nonexertional limitations must be factored in to determine claimant's true RFC.

Both the MRT and the SHRT evaluated claimant solely on exertional factors; SHRT's evaluation stated that claimant could "do simple, unskilled medium work." While this is potentially true, this determination did not take into account the full range of claimant's limitations, and did not factor in at all claimant's nonexertional limitations, as are required by the rules.

Claimant's nonexertional limitations, discussed above, are supported by claimant's medical records. Starting with the basic assumption that claimant's exertional limitations limit claimant to either sedentary work, or, viewing things in a light favorable to the Department, light or medium work, claimant's nonexertional limitations stemming from claimant's complaints of anxiety attacks, blackouts, hyperventilation, and panic attacks, render claimant unable to perform jobs that require interaction with the public. Furthermore, even if claimant's nonexertional limitation relating to claimant's ability to interact with the public was absent, the undersigned would have serious doubts regarding claimant's ability to sustain employment, even at the sedentary level. Claimant's doctor agrees with this determination and certified that claimant is unable to return to work until further evaluation. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion, and the undersigned does not see a particular reason to discount this opinion. *Rogers; Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007). Additionally, an independent Department examiner reported that absenteeism should be expected due to claimant's panic attacks. RFC assessment assesses an individual's ability to do sustained work-related physical and mental activities in a

work setting on a regular and continuing basis. Absenteeism due to panic attacks will render claimant unable to sustain any and all jobs available in the national economy.

Therefore, after careful review of claimant's medical records and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and non-exertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 2, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for the purposes of the MA program.

It should be noted that claimant applied for benefits in November, 2008. However, claimant quit working, due to complications arising from her disability in December 2008. Therefore, the Administrative Law judge holds that claimant was not disabled until December 5, 2008, the date she ceased working, and therefore became disabled for the purposes of the MA program. This December 5, 2008 onset date means that claimant is not eligible for the Retro MA-P program, as claimant did not meet the definition of disability until after her application date.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are


found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed above, and alleges an onset date of December, 2008 (when claimant quit working) the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect. Because claimant's onset date is December 5, 2008, the decision to deny Retro-MA was correct.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P and SDA application retroactive to the date of December 5, 2008, and award all benefits provided that claimant meets all other eligibility factors. The Department is further ORDERED to initiate a review of claimant's disability case in July, 2011.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/29/10

Date Mailed: 07/01/10

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.

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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 receipt date of the rehearing decision.

RJC/dj

cc:

