

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: 2009-27779
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 19, 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 August 19, 2009, in Gladwin. After due notice, a telephone hearing was held in Gladwin on August 19, 2009. Claimant personally appeared and testified under oath.

The department was represented by Valerie Boka (ES).

The Administrative Law Judge appeared by telephone.

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 27, 2009) who was denied by SHRT (July 7, 2009) based on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age--44; education--9th grade; post high school education--GED; work experience--cashier at [REDACTED], home health care provider, transporter and volunteer fireman.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2005 when she was a cashier at [REDACTED].

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

- (a) Status post 1999 slip and fall;
- (b) Depression since 2004;
- (c) Difficulty comprehending instructions;
- (d) Nervous/anxious;
- (e) Memory dysfunction;
- (f) Sleep dysfunction;
- (g) Chronic dizziness and spells;
- (h) Unable to stand for long periods;
- (i) Bilateral foot pain;
- (j) Bilateral knee pain.

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

OBJECTIVE MEDICAL EVIDENCE (July 7, 2009)

The claimant is able to perform a wide range of light work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department denied MA-P/SDA based on claimant's vocational profile [younger individual (age 44) with a GED education and a history of unskilled work] using Med-Voc Rule 202 as a guide.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing (sometimes), light cleaning, vacuuming (sometimes), laundry and grocery shopping (needs help). Claimant uses a cane 29 times a month. She does not use a walker, wheelchair, or shower stool. Claimant does not use braces. Claimant did not receive hospitalization in 2008 or 2009.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] physical examination report was reviewed.

The internist provided the following background:

CHIEF COMPLAINTS: Dizziness, lightheadedness, bilateral foot pain, knee pain, depression, head injury.

Claimant left work in January of 2007 because of the intensity of pain in her legs. The claimant has three adult children with whom she lives. She occupies herself with housework and home chores.

One year ago she began noticing increasing pain in the knees and then in December of 2006, she noticed bilateral foot pain and swelling. X-rays revealed an unidentified metallic object within the right foot and a spur which was located near the Achilles tendon. Both feet tend to swell at the ankles.

* * *

With prolonged sitting both knees and the right foot become somewhat numb. A spur was also seen on the left foot.

The claimant describes an objective vertigo as her problem with dizziness. It is present episodically, but if she does not take her Antivert 25 mg t.i.d., the act of bending down to tie her shoe will induce the dizziness. Even with the medications, she states she has to move slowly in order to prevent the vertigo. At the present time, she still has very

mild episodes, generally self-limited and of spontaneous onset.

* * *

Claimant also fell in 2004, striking her head on the pavement. The cause of the fall is obscure. Apparently the CT scan was unremarkable. Her recovery was uneventful, but her memory has been poor since that time.

The consulting internist provided the following conclusions:

- (1) Episodic dizziness.

This is fairly well controlled with Antivert and is highly suggestive of objective vertigo.

* * *

- (2) Osteoarthritis of the knees and feet.

The claimant has bone spurts bilaterally and also some unidentified metallic object seen on x-rays of the right foot. Her arthralgias are treated with Empirin with Codeine and Ansaid with some relief although the patient goes limp on the right and states that she improves her pain, i.e. her disability, by the use of a cane. Weight reduction would further this improvement. Neither ROM nor neurological abnormality were detected on clinical evaluation.

- (3) Depression.

This has been particularly obvious since after her father died in 2004. Discussion with the patient raised the question of a more deep seated and longer standing depression than that since 2004.

- (4) Trauma to the head resulting from a fall.

The reason for this is obscure. In the course of falling she hit her head, with temporary loss of consciousness. This was a one time event and appears to be of no medical consequence, although

the claimant states it was followed by an impaired memory.

* * *

(5) Hematemesis.

The etiology is obscure and apparently no studies were ever done as to cause. She was placed on Pepcid and has shown definite improvement. She has had no symptoms in the recent past of peptic ulcer disease. The abdominal examination was unremarkable.

* * *

- (b) An April 22, 2007 Ph.D. psychologist evaluation was reviewed.

COMPLAINTS AND SYMPTOMS:

Claimant is a 41-year-old who came to the evaluation unaccompanied. When asked for the reason for the evaluation, she reported that her medical doctor told her to quit work because she has severe pain in her feet and legs. She indicated that the reason for the illness has not been determined as of yet, but it is suspected that it could be bone spurs or arthritis. In addition to the pain that she feels in her feet she reported that she gets frequent dizziness. Anytime she bends over, she will get dizzy and have extreme headaches. Finally, she reported having ulcers, although she is unsure of the exact extent of it. In addition to all of the medical problems, she reported feeling depressed.

* * *

EMPLOYMENT:

Claimant reported having many different jobs, including being a cashier, working at home health care, a transporter, and a volunteer firefighter. Her longest job was working at [REDACTED] as a cashier for one year. She reported that she last worked in January of this year (2007).

The Ph.D. psychologist provided the following diagnoses:

Axis I--Dysthymic disorder.

* * *

Axis V/GAF--60.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to preclude claimant from performing all customary work functions for the required period of time. Claimant testified that she is unable to work due to mental impairments: depression, difficulty comprehending, nervousness, memory dysfunction and sleep dysfunction. The consulting psychologist provided the following diagnoses: Axis I--dysthymic disorder. Axis V/GAF--60. The licensed psychologist did not report any significant functional limitations due to claimant's mental impairments. He did not state that claimant was totally unable to work. Claimant did not provide a DHS-49D or 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 reported the following impairments: chronic dizziness and spells, inability to stand for long periods, bilateral foot pain, and bilateral knee pain. However, at this time, the medical records do not establish any severe functional limitations arising out of her physical impairments.

(11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. Social Security has denied her application. Claimant is waiting for a decision (A Social Security ALJ).

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 a Residual Functional Capacity (RFC) to perform a wide range of work.

The department thinks claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department denied MA-P/SDA benefits based on Med-Voc Rule 202.20 as a guide.

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 does 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).

The department decides eligibility based on mental impairments using the following standards:

(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 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).

(d) Sufficient Evidence:

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) Chronic Mental Impairments:

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

A statement by a medical source (MSO) that an individual is “disabled” or “unable to work” does not mean that disability exists for purposes of the MA-P/SDA programs. 20 CFR 416.927(e).

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 earning substantial income, she is not eligible for MA-P/SDA.

SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimants who are working, or otherwise performing Substantial Gainful Activity (SGA), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The medical/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. Unless an impairment is expected to result in death, it must have existed, or be expected to exist for a continuous period of at least 12 months. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments that profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria.

Under the *de minimus* rule, claimant meets the severity and duration requirements and the Step 2 criteria.

STEP #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on a Listing.

SHRT evaluated claimant's impairments using SSI Listing; she does not meet any of the applicable Listings.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a cashier for [REDACTED].

Claimant's work as a cashier for [REDACTED] was light work. Claimant was required to stand essentially for an eight-hour shift.

The medical evidence of record shows that claimant has bilateral knee pain, a foot spur and difficulty standing for long periods. For this reason, she is not able to return to her previous work as a cashier for [REDACTED].

Therefore, claimant has 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/psychological evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on her mental impairments: difficulty concentrating and comprehending, nervousness, memory dysfunction and depression. The Ph.D. psychological consultant provided the following diagnoses: Axis I--dysthymic disorder; Axis V/GAF--60. Furthermore, claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity. For these reasons, claimant is not entitled to MA-P/SDA disability based on her mental impairments.

Second, claimant alleges disability based on knee dysfunction and bone spurs in her foot. The consulting physician provided the following diagnoses: episodic dizziness, osteoarthritis of the knees and feet, trauma to the head resulting from a fall, and hematemesis. The consulting physician did not state the claimant was totally unable to work.

Third, claimant alleges disability based on chronic knee and foot pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA 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. Currently, claimant performs many activities of daily living, has an active social life with her mother, and is computer literate.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA) even though she may be confined to a wheelchair or a walker. In this capacity, she was able to work as a ticket taker for a theater, as a parking lot attendant, and as a greeter for [REDACTED]. Because of the Handicapper Laws recently enacted in the United States, there are many jobs available for persons with handicaps similar to claimant.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the 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: March 29, 2010

Date Mailed: March 30, 2010

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 receipt date of the rehearing decision.

JWS/tg

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