

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: 2009-28603
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 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, an in-person hearing was held on September 23, 2009, in Gladwin. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Terry Ehle (ES).

The claimant requested additional time to submit new medical evidence. The new medical evidence was submitted to the State Hearing Review Team (SHRT) on September 28, 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 made the final 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)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant is an MA-P/retro applicant (January 13, 2009) who was denied by SHRT (July 27, 2009) based on claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requests retro MA for December 2008.

(2) Claimant's vocational factors are: age—36; education—high school diploma; post high school education—none; work experience—retail clerk at a local coffee shop, customer service representative for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since 2009 when she worked as a retail clerk at a local coffee shop.

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

- (a) Seizures;
- (b) Chronic obstructive pulmonary disease (COPD);
- (c) Depression;
- (d) Bipolar disorder;
- (e) Diabetes mellitus.

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

OBJECTIVE MEDICAL EVIDENCE (July 27, 2009)

The department thinks that claimant has the ability to perform unskilled light work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

Based on claimant's vocational profile [younger individual (age 36) with a high school education and unskilled work experience], the department denied MA-P using Med-Voc Rule 202.20 as a guide.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower stool. She does not wear braces. Claimant received in-patient hospitalization for treatment of pneumonia in December 2008. She received in-patient hospitalization for self-cutting her wrists in July 2009.

(7) Claimant has a valid Michigan drivers' license, but does not drive an automobile because she thinks she has seizures. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A September 23, 2009 psychiatric/psychological examination report (FIA-49D) was reviewed.

The psychiatrist provided the following DSM diagnoses:

Axis I—Major depressive disorder, moderate; posttraumatic stress disorder; polysubstance dependence in remission.

Axis V/GAF—45;

(b) A September 23, 2009 mental residual functional capacity assessment (DHS-49E) was reviewed. The psychiatrist reported the following marked limitations:

- (6) The ability to maintain attention and concentration;
- (11) The ability to complete a normal work day and work week without interruptions;
- (14) The ability to accept instructions and respond appropriately;

- (20) The ability to set realistic goals or make plans independently of others.

(c) A [REDACTED] was reviewed.

The psychiatrist provided the following history:

This is a 36-year-old divorced white female, mother of two. Consultation requested by the hospital regarding overdose and suicide gesture. I reviewed her current chart, her past chart and interviewed the claimant. This is a 36-year-old divorced, white female, mother of two with a history of mood disorder and previous cutting episodes and psychiatric hospitalizations. She had apparently overused Tylenol; using up a bottle of Tylenol pills over approximately a two-day period of time in an attempt to relieve dental pain. She also lacerated right wrist, requiring some sutures. She acknowledges the attempts and the medicine used, but denies suicidal ideation. She was initially evaluated in the [REDACTED]. She told the [REDACTED] as well that she had drunk a 12-pack of beer, but wanted to go home. She became agitated and did not want to answer all of their questions. She was in restraints for a time in the ER. She did require some medications in the emergency department as well.

* * *

The psychiatrist provided the following DSM Axis I diagnoses:

Axis I:

- (1) Depressive disorder, NOS;
- (2) Impulse control disorder, NOS;
- (3) Polysubstance dependence with recent use of alcohol and marijuana and nicotine, and past use of opiates and cocaine.
- (4) Sleep apnea by history;
- (5) Chronic pain syndrome with dental disease;
- (6) Probable underlying post-traumatic stress disorder;

* * *

Axis III diagnoses:

- (1) Recent overuse of acetaminophen;
- (2) Suffered laceration to right wrist requiring sutures;
- (3) Obesity;
- (4) Sleep apnea;
- (5) Previous gastric bypass surgery;
- (6) Hypertension;
- (7) Dyslipidemia;
- (8) Microcytic anemia.

* * *

Axis V/GAF—60:

- (d) A [REDACTED] report was reviewed. The physician provided the following assessment:

There is no evidence of an underlying epileptic tendency. No distinct epileptiform activity is noted. No pathologic changes are seen with photic stimulation or with fair efforts with hyperventilation.

* * *

(9) The probative medical 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 testified that she has been diagnosed with depression and bipolar disorder. A recent psychiatric examination (July 1, 2009) provides the following diagnoses: depressive disorder, NOS; impulse control disorder, NOS; polysubstance with recent use of alcohol, marijuana, NOS; polysubstance dependence with recent use of alcohol, marijuana

and nicotine; sleep apnea by history; probable underlying post-traumatic stress disorder; chronic pain syndrome with dental disease. The psychiatrist provided the following Axis V/GAF score of 60. Claimant did provide a DHS-49D and a DHS-49E. The psychiatrist reports that claimant has marked mental dysfunction in four of the twenty skill sets which were evaluated. At this time, the medical records do not establish severe functional limitations arising out of claimant's mental impairments.

(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 reported the following physical diagnoses: COPD and seizure disorder. Recent medical records (September 19, 2008) indicate there is no evidence of an underlying epileptic tendency. The recent physical examination report provides the following physical diagnoses: recent overuse of acetaminophen; self-inflicted laceration to right wrist requiring sutures; obesity; sleep apnea; previous gastric bypass surgery; hypertension; dyslipidemia and microcytic anemia.

(11) Claimant recently applied for federal disability benefits (SSI) with 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 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 light work.

The department denied MA-P benefits based on Med-Voc Rule 202.20

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).

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).

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.

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, and 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, the claimant must satisfy both the gainful work and the duration criteria. 20 CFR 416.920(a).

Since Step 2 falls under the *de minimus* rule, claimant meets the severity and duration requirements. Claimant meets the Step 2 disability test.

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 the Listings.

SHRT evaluated claimant's impairments using the SSI Listings. Claimant does not meet 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 retail sales clerk at a coffee shop. This was sedentary work.

Although claimant alleges that she is unable to work based on her mental impairments (depression and bipolar disorder) the medical records provided by the consulting psychiatrist do not state that claimant is totally unable to work due to her mental impairments. Recent GAF scores provided by the consulting psychiatrist range from 45 to 60 (serious symptoms to

moderate symptoms). Second, claimant alleges disability based on her physical impairments: COPD, seizures, and diabetes mellitus. There is no probative medical evidence in the record to show that claimant's physical impairments severely limit claimant's ability to function to the degree that she is totally unable to work.

Third, claimant alleges disability based on her dental pain. 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. Currently, claimant performs many activities of daily living, has a valid driver's license 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 light work (SGA). 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].

Consistent with this analysis, the department correctly denied claimant's MA-P 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 claimant does not meet the MA-P disability requirements under PEM 260.

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: December 21, 2009

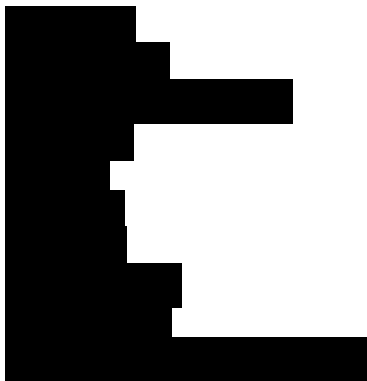
Date Mailed: December 22, 2009

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

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