

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: 2009-3164
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 24, 2009
Wayne 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 in Inkster on February 24, 2009. Claimant personally appeared and testified under oath.

The department was represented by Bobbie Thompson (Medical Contact Worker).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence requested by SHRT.

Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on February 24, 2009.

Claimant waived the timeliness requirement 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 (July 18, 2008) who was denied by SHRT (November 7, 2008) based on claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age--45; education--high school diploma, post-high school education--studied at [REDACTED] (Computer Information Systems major) and at massage therapy school; work experience--Certified Nurse's Assistant for a long-term care facility and massage therapist.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007, when she was a Certified Nurse's Assistant for a long-term care facility.

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

- (a) Carpal tunnel syndrome (both hands);
- (b) Depression;
- (c) Nerve damage (both legs).

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

OBJECTIVE MEDICAL EVIDENCE (November 7, 2008)

Medical examination report and treating note of 7/29/2008 indicated claimant has diagnosis of: asthma, low back pain with

radiculopathy, and neck pain with radiculopathy. She was noted to smoke cigarettes and marijuana. On exam, she had some wheezing and rhonchi, decreased range of motion of cervical and lumbar spines, radiculopathy to the upper extremities with some numbness and tingling, and radiculopathy to the lower extremities without any other manifestation (page 12 and 4).

In 1/2007, a nerve conduction study and EMG were reported as normal.

Psychiatric consultative exam of 7/29/2008 reported claimant was not receiving ongoing mental health counseling. She reported a hospitalization in 2007. On exam, she was noted to be positive, friendly, her language and speech were normal. Motor activity was normal. Her mood was depressed and she was noted to cry through much of the interview. Diagnosis given was major depressive disorder (page 6).

Hospital records of 8/2007 indicate she was hospitalized because she was anxious, depressed with suicide ideation. She was treated for eight days and released in an improved condition.

ANALYSIS: Claimant has asthma which is normally well controlled, despite her habit of smoking. She does have neck and back pain, with complaints of radiculopathy although an EMG was normal. She should avoid heavy lifting and constant overhead reaching. Medical opinion was considered in light of CFR 416.927. The medical evidence in the file does not demonstrate any other impairments that would pose a significant limitation.

* * *

(6) Claimant lives with her son and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (needs help), dish washing (sometimes), vacuuming, laundry (needs help) and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does wear braces on both her arms, her waist and her right leg. Claimant did not receive in-patient hospital services 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 records are persuasive:

- (a) A February 24, 2009 psychiatric progress report was reviewed. The psychiatrist provided the following diagnoses: Major depressive disorder, recurrent, with psychotic features. Paranoid of leaving house. The psychiatrist did not provide an AXIS V/GAF score.
- (b) A September 4, 2007 psychiatric hospital discharge summary was reviewed. The discharge diagnosis was: AXIS I--(1) Major depression, a single episode; rule out dysthymia. The AXIS V/GAF score was 55-60.
- (c) An August 27, 2007 psychiatric admit note was reviewed. The psychiatrist provided the following history: Claimant has acknowledged that she has been going through a lot of issues in her life. Apparently she has chronic back pain and she is also having problems in terms of dealing with that. Plus, she has lost quite a few people in her life, her husband, her parents and also a brother. She claims that they have all been very, very helpful and supportive and that she is having a very difficult time dealing with that. She claims at this time that all she has is only a sister and she is not sure if she wants to burden her, so she claims that she usually keeps things to herself and gets very overwhelmed. She gets depression, anxiety, helpless and hopeless feelings, and she just cannot cope with any of these things. She denied any psychosis at this time. She does have difficulty in terms of anger, because of the problems that she has been dealing with.

PAST MEDICAL HISTORY: Claimant has never been hospitalized. She has not been treated in the past and she does have chronic back pain, which actually causes her to feel very overwhelmed, according to her, and she also has problems in terms of anxiety and depression.

AXIS I--Major Depression, recurrent.
AXIS V/GAF--25.

- (d) An August 27, 2007 internal medicine consultation was reviewed.

The internist provided the following background: This is a 43-year-old female that [REDACTED] has admitted because of a psychiatric issue. The claimant had a small insect bite on the left arm and since that time she feels she has been getting numbness and tingling of her left arm extending from the mid upper arm to the finger tips. Claimant is denying any other complaints at this time.

The internist provided the following assessment:

- (1) Asthma by history which is well controlled;
- (2) Carpal tunnel syndrome on the left hand;
- (3) Left ulnar neuropathy;
- (4) Very small skin lesion which is not of any significance;
- (5) Substance abuse. Marijuana was positive;
- (6) Depression.

* * *

(9) The probative psychological evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's psychiatrist provided the following diagnoses: Major depressive disorder, recurrent, with psychotic features; paranoid of leaving the house. The most recent AXIS V/GAF score is 55 to 60. The medical record does not corroborate claimant's allegation of a mental impairment that is so severe that she is totally unable to work. Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity. Taking the psychiatric reports as a whole, the record does not establish that claimant is totally unable to work based on her mental impairments.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. The major physical impairments established by the medical record are asthma by history, which is well controlled; carpal tunnel syndrome on the left hand; left ulnar neuropathy; very small skin lesions; substance abuse/marijuana is positive. There is no evidence in the medical record that claimant is totally unable to work based on a physical impairment. The medical record in this case contains contradictory evidence. At this time, there is no reliable clinically-based medical evidence to establish a severe disabling physical condition.

(11) Claimant recently applied for federal disability benefits 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/SDA benefits based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled medium work.

The department notes that claimant has asthma which is normally well controlled, despite her habit of smoking. Also, claimant does have neck and back pain with complaints of radiculopathy, although her EMG was normal.

The department acknowledges that claimant should avoid heavy lifting and constant overhead reaching.

The medical evidence from claimant's treating psychiatrist is not entitled to great weight because it is contrary to the totality of the medical evidence in the record.

Based on claimant's vocational profile [younger individual (age 45), with a high school diploma, one year of college and a history of working as a Certified Nurse's Assistant], the department denied disability benefits based on Med-Voc Rule 203.28, 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 do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations;
and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the

client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

To determine to what degree claimant's alleged mental impairments limit her ability to do basic work activities, 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 or Pace.**

Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Claimant has the burden of proof to show by a preponderance of the medical evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes. PEM 260/261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by a consideration of all factors in each particular case.

STEP 1

The issue at Step 1 is whether claimant is performing Substantial Gainful Activity (SGA). If claimant is working and is earning substantial income, she is not 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 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 establish an impairment which is expected to result in death, or has existed for at least 12 months totally preventing all current work activity. 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 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant last worked as a Certified Nurse's Assistant for a long-term care facility. This was medium work.

The medical evidence of record establishes that claimant has neck and back pain. In addition, she has a diagnosis of asthma, radiculopathy and a normal EMG. SHRT notes that claimant should avoid heavy lifting and constant overhead reaching. This would preclude claimant from returning to her previous work as a Certified Nurse's Assistant.

Therefore, claimant meets the Step 4 disability test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. **Claimant has the burden of proof** to show by the medical/psychological evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on her depression. The medical records do show a diagnosis of depression, but its severity is in dispute. Also, claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity. Although claimant's treating psychiatrist states that she has a diagnosis of major depressive disorder, recurrent, with psychotic features, this MSO opinion will not be given great weight because the medical record as a whole does not establish a mental impairment that precludes all current work activity.

Second, claimant alleges disability based on neck and back dysfunction and nerve damage in her legs. The medical records do contain a diagnosis of asthma (claimant continues to smoke), carpal tunnel syndrome (left hand), left ulnar neuropathy, small skin lesions and substance abuse. This would preclude heavy lifting and a return to her previous work as a Certified Nurse's Assistant for a long-term care facility. However, claimant's current medical diagnoses do not preclude all employment.

Finally, claimant testified that a major impediment to her return to work was her neck and back pain and her carpal tunnel syndrome. 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 found 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 neck/back/carpal tunnel impairments. Claimant currently performs many activities of daily living and has an active social life with her 21-year-old son. Also, claimant is computer literate and has advanced computer skills because she studied computer information systems for one year at [REDACTED].

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA). In this capacity, she is physically able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

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

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: July 7, 2009

Date Mailed: July 7, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

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