

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: 200933998
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 4, 2009
Wayne 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 November 4, 2009.

ISSUE

Was the denial of claimant's MA-P and SDA application 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 and SDA on February 9, 2009.
- (2) Claimant is 43 years old.
- (3) Claimant has a high school education.
- (4) Claimant is not currently working.

- (5) Claimant has a prior work history consisting of a cook and aide at a convalescent home.
- (6) Claimant performed this job at a light and medium exertional level.
- (7) Claimant has also been diagnosed with degenerative disease of the lumbrosacral area, as well as two herniated discs.
- (8) Claimant has a history of severe back and lower extremity pain in relationship to this problem.
- (9) Claimant has had several surgical interventions to treat this pain, including a spinal fusion and two other surgeries to repair the herniated discs.
- (10) These surgeries have been, at most, only somewhat successful.
- (11) Claimant's injury still manifests with severe, chronic pain, documented by several treating sources, manifesting at about a 7 on the pain scale, with medication.
- (12) Claimant has been proscribed several narcotics to deal with this pain.
- (13) Further surgical interventions are no longer an option.
- (14) The latest surgery, in 2007, was complicated by some nerve damage.
- (15) This nerve damage caused claimant to experience foot drop in her right leg, a condition that left claimant with the inability to dorsiflex her right foot.
- (16) Claimant's right foot is mostly paralyzed and only able to give a flicker of contraction.
- (17) As a result of this nerve damage, claimant has issues with ambulation and needs to use a cane.
- (18) Her gait is dysfunctional.

- (19) A form DHS-49, Medical Examination Report, was completed by claimant's treating source.
- (20) Claimant's functional capacity is extremely limited, and only retains the capacity to lift less than 10 lbs frequently, is not to lift any weight heavier than 10 lbs, should not stand or walk more than 2 hours in an 8 hour day, retains no capacity for pushing and pulling, is unable to operate foot/leg controls with her right foot, is medically required to use a device for ambulation, and has a deteriorating condition.
- (21) A psychological exam obtained by the Department in response to claimant's application diagnosed claimant with major recurrent depression, and chronic PTSD, stating that claimant's symptoms can cause problems with doing simple jobs.
- (22) Claimant was given a GAF of 47 with a guarded prognosis.
- (23) Claimant's insight is only fair, is in remission for polysubstance dependence, and suffered from typical symptoms of depression, including crying spells, impaired sleep and concentration, low energy and social withdrawal.
- (24) Claimant was given a GAF of 48 with a guarded prognosis by a treating source.
- (25) Claimant's treating source also completed a Mental RFC assessment.
- (26) Claimant was rated as markedly limited in several categories, including the ability to maintain concentration for extended periods, the ability to sustain an ordinary routine without supervision, and the ability to complete a normal workday without interruptions from psychologically based symptoms.

- (27) On May 22, 2009, the Medical Review Team denied MA-P and SDA, stating that claimant was capable of performing other work, as per grid rule 202.20.
- (28) The rule cited meant that MRT decided that claimant retained functional capacity for light work.
- (29) On July 31, 2009, claimant filed for hearing.
- (30) On September 11, 2009, the State Hearing Review Team denied MA-P, Retro MA-P and SDA, stating that claimant retained the capacity to perform a wide range of light semi-skilled work.
- (31) On November 4, 2009, a hearing was held before the Administrative Law Judge.

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 more than sufficient evidence of a chronic back injury that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant's treating source, as well as an independent Department examination, all

state that claimant has restrictions in her functional capacities to do physical activities, including lifting, walking, and standing. Furthermore, the great weight of the evidence shows that claimant's mental disorders provide more than minimal difficulty in maintaining concentration, performing activities within a schedule, remembering detailed instructions, sustaining ordinary routines, working with others, making decisions, completing a normal workday without psychologically based disruptions, interacting with the public, asking questions, accepting instructions, responding to changes and planning independently. Finally, claimant has provided demonstrable evidence of social withdrawal, and severe difficulties in maintaining social interaction. These symptoms have been chronic and part of a condition that started in its severe manifestation almost 10 years ago, following a traumatic event, according to the independent psychiatric evaluation. Claimant thus easily passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. 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.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

After considering the listings contained in Section 1.00 (Musculoskeletal), 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. A listings disability finding for a disorder of the spine requires, among other factors, a finding of nerve root compression with sensory or reflex loss; spinal arachnoiditis; or spinal stenosis. None of the medical evidence

thus far presented to the Administrative Law Judge contains any allegations or indications of the above.

However, the great weight of the evidence of record finds that claimant's mental impairment meets or equal the listings for mental impairments contained in section 12.00 (Mental Impairments).

Appendix 1 of Subpart P of 20 CFR 404, Section 12.00 has this to say about mental disorders:

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings...

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the diagnostic description, that is manifested by the medical findings in paragraph A...

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation.

Where we use "marked" as a standard for measuring the degree of limitation, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with your ability to function independently, appropriately, effectively, and on a sustained basis. See §§ 404.1520a and 416.920a.

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied....

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Depressive syndrome characterized by at least four of the following...
 - c. Sleep disturbance; or...
 - e. Decreased energy; or...
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking...

AND

- B. Resulting in at least two of the following:
 - 1. Marked restriction of activities of daily living; or
 - 2. Marked difficulties in maintaining social functioning; or
 - 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 - 4. Repeated episodes of decompensation, each of extended duration;

In order to meet or equal the listings for mental impairment, a claimant must either meet or equal the recommended listings contained in both the A and B criteria, or meet or equal the listings in the C criteria. After examination of the C criteria, the undersigned holds that claimant does not meet this listing. However, a careful examination of claimant's medical records, both supplied from a treating source, and from an independent Department examiner, show claimant meets both the A and B criteria.

Claimant's psychological reports, as well as those administered by the Department show documented persistence of claimant's major recurrent depression, and post-traumatic stress disorder (PTSD). The documented medical evidence paints a portrait of a socially withdrawn individual. Claimant admitted to sleep disturbance, receiving only 2-3 hours of sleep per night,

which, as documented by claimant's treating source, is often plagued by nightmares of the incident which led to claimant's PTSD symptoms. Claimant's records also show an individual with decreased energy, with frequent thoughts of guilt and worthlessness which led to, on at least one occasion, thoughts of suicide. Finally, claimant's treating source stated that claimant experienced marked difficulties in 5 of the 8 Sustained Concentration and Persistence categories, with moderate limitations in 2 others (including the ability to make simple work-related decisions) leading to a well supported conclusion that claimant has difficulties in concentration and thinking. Therefore, the undersigned holds that claimant meets or equals the listings found in the A criteria.

With regards to claimant's activities of daily living, the testimony and evidence of record show that while claimant has moderate difficulties in maintaining her daily activities, these do not rise to the marked level. Claimant does not participate in household chores, but will occasionally cook for herself. These limitations do not appear to be based upon claimant's mental disabilities, but instead, her physical disabilities. Claimant is capable of self-grooming; while her treating source described claimant's dress as "slightly disheveled but appropriate", all sources remarked that claimant had good hygiene. Claimant testified that she does try to read, and will listen to music, and will watch TV. While the Administrative Law Judge is somewhat concerned with claimant's activity level, the ultimate impression given by the claimant is that her difficulties in maintaining her activities of daily living are moderate at best.

Claimant's difficulties in maintaining concentration, persistence and pace are another matter. *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. These limitations must be of such an extent that claimant is

held to be markedly impaired with regard to concentration persistence and pace. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

As stated above, in a typical Mental Residual Functional Capacity assessment, 8 categories are dedicated to Sustained Concentration and Persistence. Claimant received a rating from her treating source of “markedly limited” in 5 of these categories, including the categories of “ability to maintain attention and concentration for extended periods”, “ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances”, “ability to sustain an ordinary routine without supervision”, and the “ability to work in coordination or proximity to others without being distracted by them.” Furthermore, claimant received a rating of “moderately limited” in 2 other categories—the ability to carry out detailed instructions and the ability to make simple work related decisions. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007); restated (again) in *Hensley v. Commissioner*, No. 08-6389 (6th Cir. July 21, 2009). The undersigned sees no reason to discount claimant’s treating source opinions, as they are consistent with two psychiatric reports—one obtained from an independent source—and the undersigned’s own hearing observations, and thus accepts this Mental RFC assessment as accurate.

Therefore, as these categories are exactly what were contemplated by the listings for the B criteria, the undersigned holds that claimant is markedly limited in maintaining concentration, persistence and pace.

Claimant has no listed episodes of decompensation, and therefore, does not meet those criteria.

Finally, *social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR 404 App 1, Sub P, 12.00 (C)(2). Claimant's mental RFC notes, with regard to social interactions, that claimant was markedly limited in her ability to interact appropriately with the general public, and the ability to respond appropriately to criticism from supervisors. Claimant was rated as moderately limited in her ability to ask simple questions and request assistance and in her ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes.

While this assessment shows claimant's is markedly impaired on maintaining social functioning in a work-related environment, the listings do not limit social functioning to this area. Social functioning is specifically defined as a general ability to maintain social functioning with individuals. Thus, while the mental RFC is useful in examining one area of claimant's life, it is hardly useful in examining all of her general social interactions.

However, the evidence of record is more than enough to fill in the gaps. Claimant testified that she spends most of her time indoors, away from the public. Claimant does not do her own shopping. Both psychiatric examinations remark that claimant is socially withdrawn; the independent Department examination notes that she has limited contact with neighbors. More importantly, claimant has been given a GAF of 47 by the independent Department examiner, and a GAF of 48 by her treating source. A GAF between 41-and 50 is generally defined as having a serious impairment in social, occupational, or school functioning. This GAF score would be consistent, considering the record as a whole, with an individual with a serious impairment in social functioning.

Therefore, when combining claimant's Mental RFC assessment, and claimant's psychiatric record, including claimant's GAF scores, the Administrative Law Judge is able to hold that claimant is markedly impaired in social functioning.

As claimant is markedly impaired in concentration, persistence and pace, and social functioning, the Administrative Law Judge holds that the claimant meets the B criteria in the listings for mental impairments.

As claimant meets both the A and B criteria, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 12.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, 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. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

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, 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.

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 and award required benefits retroactive to the date of application, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in March, 2011.



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

Date Signed: 02/19/10

Date Mailed: 02/23/10

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.

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:

