

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: 2009-6748  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 18, 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 on March 18, 2009 in Inskster. Claimant personally appeared and testified under oath.

The department was represented by Marietha Allman (Medical Contact Worker).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was submitted to the State Hearing Review Team (SHRT) on April 20, 2009. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, 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/Retro/SDA applicant (September 2, 2008) who was denied by SHRT (December 30, 2008) due to claimant's failure to submit probative evidence of a severe impairment. SHRT requested a complete physical examination by a licensed physician to provide current probative medical evidence. Claimant requests retro-MA for July 2008.

(2) Claimant's vocational factors are: age—52; education—high school diploma, post-high school education—claimant attended [REDACTED] and studied Medical Billing, she attended [REDACTED] and studied Nursing; work experience—medical billing clerk for [REDACTED]), medical billing for [REDACTED] pediatric unit.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since March 2008 when she worked in a medical billing department for [REDACTED].

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

- (a) Seizure activity at an increasing rate;
- (b) Knee and back pain;
- (c) Frequent falls;
- (d) Unable to drive;
- (e) Depression;
- (f) Memory dysfunction.

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

**OBJECTIVE MEDICAL EVIDENCE (DECEMBER 30, 2008)**

**ANALYSIS:**

Additional detailed current information is needed. Please obtain current Activities of Current Living report and two examinations (from an internist and a psychiatric).

Medical opinion was considered in light of CFR 416.927.

The evidence in the file does not demonstrate any other impairment that would pose a significant limitation.

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, mopping, vacuuming, laundry and grocery shopping (needs help). Claimant uses a cane approximately 10 times a month. She does not use a walker, a wheelchair or a shower stool on a daily basis. Claimant wears a brace on her left arm at night. Claimant lives with her adult daughter. Claimant was hospitalized overnight in December 2008 and February 2009 to obtain treatment for her seizure disorder.

- (7) Claimant does not have a valid driver's license and does not drive an automobile due to her seizure activity. Claimant is computer literate.

- (8) The following medical records are persuasive:

- (a) An August 26, 2008 psychiatric/psychological examination report (DHS-49D) was reviewed. The psychiatrist provided the following DHM diagnoses: Axis I—Major depressive disorder; Axis V/GAF—35.
- (b) An August 26, 2008 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed. The psychiatrist lists four skill sets out of a possible 20 as "markedly limited". They are (1) ability to remember locations; (2) Ability to understand and remember instructions; (3) be able to understand and remember detailed instructions; (4) Ability to travel in unfamiliar places.

- (c) An August 5, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: Complex partial seizure disorder.

The physician provided the following functional limitations:

- (a) Claimant should not work at unprotected heights; claimant can lift 10 pounds frequently and 20 pounds occasionally; claimant is able to stand/walk less than 2 hours in an 8 hour day; claimant can sit about 6 hours in an 8 hour day. The physician reported that claimant is able to use her hands/arms normally. She is able to operate foot/leg controls normally. Claimant should not operate heavy machinery.

(9) The probative medical evidence does not establish an acute psychiatric condition expected to prevent claimant from performing customary work functions for the required period of time. The psychiatrist provided the following diagnoses: Major Depressive Disorder with a GAF of 35. The psychiatrist report, when taken in context with the vocational evidence of record, does not establish a severe mental impairment that totally precludes substantial gainful activity. Claimant did not provide a DHS-49D or a DHS-49E.

(10) The probative medical evidence does not establish an acute physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The examining physician provided the following diagnoses: Complex partial seizure disorder. The physician reported that claimant is able to lift 10 pounds frequently and 20 pounds occasionally. She is able to stand/walk at least 2 hours in an 8 hour day; she is able to sit about six hours in an 8 hour day. She is able to use her hands/arms normally. She is able to use her feet and legs normally. The physician noted that claimant should not work at unprotected heights and should not operate heavy machinery. The physician's report, when taken in

conjunction with the record as a whole, does not establish a severe physical impairment that would totally preclude substantial gainful activity.

(11) Claimant's most prominent complaint is that her seizure disorder causes her to fall unexpectedly and she has sustained several severe injuries as a result.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Her application was denied. Claimant filed a timely hearing request.

## **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 not submitted current medical records in order to establish current eligibility for the programs requested. The department requested that claimant provide a current physical examination by a licensed physician.

### **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).

**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. PRM, Glossary, page 34.

The vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability requirements.

**STEP 2**

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

A severe impairment is defined as a verified medical condition which totally precludes substantial employment. Duration means a severe impairment is expected to last for 12 continuous months or result in death.

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 any of the Listings.

Therefore, the Administrative Law Judge concludes that claimant does not meet the Step 3 disability test.

**STEP 4**

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a billing clerk for a local hospital.

The medical evidence of record establishes that claimant is able to perform sedentary work. The physician who provided the DHS-49D (August 5, 2008) did not state claimant was totally unable to work. He reported that she is able to lift 10 pounds frequently and 20 pounds occasionally. She is able to stand/walk at least 2 hours in an 8 hour day and she is able to sit about 6 hours in an 8 hour day. She is able to use her hands/arms normally and is able to operate foot controls. The only limitations imposed by the physician are: Claimant cannot work at

unprotected heights and cannot operate heavy machinery. These restrictions do not prevent claimant from returning to her previous work as a billing clerk.

Therefore, claimant does not meet Step 4.

### **STEP 5**

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work. For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED]. [REDACTED] at 20 CFR 416.967.

The vocational evidence of record establishes that claimant is able to perform sedentary work. Claimant's vocational profile shows an individual approaching advanced age (52) with a high school education and 2 years of college at [REDACTED] (Nursing major).

First, claimant alleges disability based on a mental impairment (depression). The diagnosis of depression is confirmed by the DHS-49D (August 26, 2008). The psychiatrist indicated that claimant was severely limited in 4 skill sets, but not markedly limited in the remaining 20. The psychiatrist did not state claimant is totally unable to work due to her depression.

Second, claimant alleges disability based on her seizures disorder and the injuries she has sustained during recent falls. The physician who examined claimant and submitted the DHS-49 (August 5, 2008) does not expressly state that claimant is totally unable to work. He does restrict her from working at unprotected heights and operating heavy machinery.

Third, claimant testified that she is unable to work due to knee and back 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. Claimant currently performs many Activities of Daily Living, has an active social life with her daughter. In addition, she is computer literate; She also has 2 years of college. The evidence of record, taken as a whole, suggests that claimant is able to perform substantial gainful activity.

Based on this analysis, the department correctly denied claimant's MA-P/SDA benefits.

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: March 3, 2010

Date Mailed: March 4, 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 mailing date of the rehearing decision.

JWS/sd

cc:

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