

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: 2009-7550
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 8, 2009
Oakland 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 April 8, 2009 in Madison Heights. Claimant personally appeared and testified under oath.

The department was represented by Linda Riffenberg (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on April 15, 2009. Claimant waived the timeliness requirement so that 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/Retro/SDA applicant (May 2, 2008) who was denied by SHRT (January 12, 2009) based on claimant's ability to perform unskilled work. Claimant requests Retro-MA for February, March and April 2008.

(2) Claimant's vocational factors are: age--39; education—high school diploma, post-high school education—[REDACTED] from [REDACTED] (Applied Science Major); work experience—secretary and flight attendant for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February 2008 when she worked as a secretary.

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

- (a) Status post suicide attempts (X3);
- (b) Chronic crying spells;
- (c) Fatigue;
- (d) Anxiety;
- (e) Takes psychotropic medications but they do not work;
- (f) No interest in seeing her 2 minor sons;
- (g) No interest in her usual hobbies or other pleasurable activities.

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

OBJECTIVE MEDICAL EVIDENCE (JANUARY 12, 2009)

SHRT thinks that claimant is able to perform unskilled work based on 20 CFR 416.968(a).

SHRT evaluated claimant's impairments using SSI Listings 12.04; 12.06; 12.08.

SHRT decided that claimant's bipolar disorder and mood disorder do not totally preclude all work activities.

- (6) Claimant lives with her mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry (sometimes) and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces. Claimant received inpatient hospital care in March 2008 for bipolar disorder, depression, and a suicide attempt.

- (7) Claimant has a valid driver's license and drives an automobile approximately 8 times a month. Claimant is computer literate. Claimant has 2 minor sons who do not live with her. Claimant sees them on a regular basis, under supervision.

- (8) The following medical/psychiatric records are persuasive:

- (a) A May 3, 2008 Psychiatric/Psychological Examination Report/DHS-49D was reviewed. The psychiatrist provided the following background:

Claimant has been hospitalized psychiatrically/inpatient on 3 occasions; most recently in August 2007 and March 2008. Claimant's mental status examination shows a person who is extremely labile. The psychiatrist notes that claimant has been unable to handle job and work situations. She has severe mood swings with crying spells and fatigue not attenuated by rest.

The psychiatrist provided the following DSM diagnosis:
Mood disorder, NOS.

* * *

Axis V/GAF 51.

- (b) A May 3, 2008 Mental Residual Functional Capacity Assessment (DHS-49E) was reviewed.

The psychiatrist reported that claimant is markedly limited in the following 9 skill sets:

- (1) The ability to maintain attention and concentration for extended periods;
- (2) The ability to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances.
- (3) The ability to sustain an ordinary routine without supervision.
- (4) The ability to work in coordination with or in proximity to others, without being distracted by them;
- (5) The ability to make simple work related decisions;
- (6) The ability to complete a normal work day and work sheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.
- (7) The ability to accept instructions and respond appropriately to criticism from others;
- (8) The ability to respond appropriately to change in the work setting;
- (9) The ability to set realistic goals or make plans independently of others.

(9) The probative psychiatric evidence establishes an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. A recent psychiatric evaluation (Mental Residual Functional Capacity/DHS-49E), dated May 3, 2008 shows that claimant is dysfunctional in 9 out of 20 skill sets evaluated. The psychiatrist noted that claimant is unable to perform in a work setting. She has a labile personality and experiences chronic unexpected crying spells.

(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 that she suffers from chronic fatigue. There is no clinical documentation for this impairment.

(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 has the Residual Functional Capacity (RFC) to perform unskilled work.

The department evaluated claimant's impairments using SSI Listings 12.04, 12.06 and 12.08.

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 mental impairment limit her ability to work, 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 Functions.**

...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 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. Using reliable, uncontroverted medical evidence, claimant must establish an impairment which is expected to result in death, or has existed for at least 12 months, and totally prevents all current work activities. 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.

However, SHRT reviewed claimant's allegation of disability using SSI Listings 12.01; 12.06; and 12.08.

Claimant does not meet the applicable Listings

Therefore, she 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 previously worked as a secretary. She has also worked as an airline stewardess. Claimant's work was sedentary work.

The medical evidence of record does not establish that claimant is unable to return to her previous work as a secretary or an airline stewardess based on a physical impairment.

However, claimant's psychological impairments (anxiety and mood disorder) do preclude employment that requires close cooperation with large numbers of strangers.

Based on a careful review of the entire medical record, claimant is no longer able to work as a secretary or as an airline stewardess because she is unable to concentrate on the tasks and is unable to function around large numbers of strangers.

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 anxiety and mood disorder. The record shows that claimant has attempted suicide on 3 separate occasions, she has little or no interest in seeing her minor sons, she does not enjoy interacting with people, and she finds even the simplest tasks (getting ready to come to the hearing) overwhelming to the point that she does not want to participate in the activity. The consulting psychiatrist reports that claimant has frequent crying spells and that she suffers from a mood disorder which can appear without warning. Claimant has a high level of lability. In addition, the psychiatrist reported on the DHS-49E that claimant is dysfunctional in 9 out of the 20 employment related skill sets which he evaluated. In short, the medical evidence of record shows that claimant is disabled based on her mental dysfunction at this time.

Second, claimant alleges disability based on chronic fatigue. Claimant has no interest in performing day-to-day activities of daily living or in interacting with her relatives or her children.

In short, the Administrative Law Judge thinks that claimant is totally unable to work at this time based on her combination of impairments. Claimant's labile behavior makes it exceedingly difficult for her to relate to friends and strangers. She is unable to concentrate and is unable to get through the day without chronic crying.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is not able to perform simple unskilled sedentary work (SGA). Claimant's disability which is almost essentially mental in nature, precludes her from leading a normal life and leads her to think suicidal thoughts continuously and to act on them, occasionally (3 times in the last 3 years).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P/SDA disability requirements under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, REVERSED.

SO ORDERED.

/s/ _____

Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 17, 2009

Date Mailed: August 18, 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/sd

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