

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: 2010-47577
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 8, 2010
Ottawa 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 September 8, 2010, in Holland, Michigan. The claimant personally appeared and testified under oath.

The department was represented by Dan Boter (Program Manager) and Patrick Kelly (ES).

The Administrative Law Judge appeared by telephone from Lansing.

The record closed on September 8, 2010

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 (February 16, 2010) who was denied by SHRT (August 18, 2010) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant's drug and alcohol history was also cited by SHRT as a factor in the denial. Claimant requested retro MA for November and December 2009 as well as January 2010.

(2) Claimant's vocational factors are: age--42; education--high school diploma; post high school education--two semesters at [REDACTED]; two semesters at [REDACTED], and three semesters at [REDACTED]; work experience-- bartender and waitress.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a bartender in 2008.

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

- (a) Extreme nausea;
- (b) Pancreatitis;
- (c) Chronic seizures;
- (d) Lightheadedness;
- (e) Dizziness;
- (f) Epilepsy;
- (g) Post Traumatic Stress Disorder (PTSD);
- (h) Chronically stressed out;
- (i) Currently abstaining from alcohol; and
- (j) Weakness.

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

OBJECTIVE MEDICAL EVIDENCE (8/18/2010)

Claimant is alleging disability secondary to substance abuse, pancreatitis and seizure disorder. The evidence in file documents that claimant has pancreatitis secondary to chronic alcohol abuse. Further, the evidence shows the claimant has alcohol withdrawal induced seizure activity. There are some questionable observations that seizure activity may be more than just alcohol withdrawal related, but there is no definitive objective evidence supporting this hypothesis.

ANALYSIS

The evidence supports that any limitations the claimant has at this time are directly related to her history of alcohol and cocaine abuse, primarily her alcohol abuse.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing, light cleaning (sometimes), mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear braces. Claimant states she was hospitalized as an in-patient in 2009, but did not remember any details. Claimant states she was hospitalized twice in 2010, but does not remember any pertinent details.

(7) Claimant does not have a valid driver's license and does not drive. Claimant is computer literate and has a computer at her home.

(8) The following medical records are persuasive:

(a) A July 19, 2010, physician's office note was reviewed.

The physician provides the following history:

Claimant follows up for seizures which may have occurred separately from her alcohol abuse. She denies any breakthrough seizures on Keppra 500 mg daily in addition to Dilantin 300 mg daily. However, she does report excessive drowsiness. She continues on Clonidine and Ativan which may also contribute.

She is alert and well-oriented with clear speech. No sign of medication toxicity (illegible) tremor ataxia or rash are seen.

* * *

The physician does not state that claimant is totally unable to work.

- (b) A [REDACTED] report was reviewed. The following information was provided by the hospital.

HISTORY:

This is a 42-year-old female who was seen in the emergency department on 5/01/2010 at 0918 hours. History of low back pain. Questionable mid flank pain. Interscapular pain. She has no abdominal pain, but is concerned that her pancreatitis has returned. Claimant does have a history of pancreatitis, apparently related to alcohol in times past. This time she has no vomiting. She has had some nausea, no abdominal pain. She said she has not had any alcohol in 7 days. She was in [REDACTED] 7 days ago for alcohol-related seizures. She was placed on Librium and says she is taking 75 to 100 mg of Librium a day. She states she has not been drinking concurrently with medications.

The hospital physician provided the following impression:
Back pain; no current evidence of pancreatitis.

- (c) A [REDACTED] [REDACTED] psychological medical report was reviewed.

The Ph.D. psychologist provided the following history of illness/complaints and symptoms:

Claimant described her presenting problems as: “I have seizures and the doctors don’t know what kind they are; I am on Dilantin but that is not good for you and they told me they want to wean me off. They don’t know if it is from all the drinking or something else I was doing or what. I just had two last month but there is no pattern. I have pancreatitis which causes me terrible pain. I usually wait until the pain is so bad I can’t take it before I go to the

hospital because I have crappy insurance. I'm being evaluated for ADHD and I have depression. I have lower back pain from degenerative disc disease. The doctors were also checking me out for blood sugar problems. In the last two years, my weight has gone from 140 to 100. My State ID says I am 125 pounds. I think my seizures started about four years ago; the pancreatitis about two years ago; depression I have had all my life and I think I have had ADHD all of my life also. About six years ago, I started getting lower back pain and I could not sleep through the night. I got x-rayed when I lived in the [REDACTED] area and they found the discs problems.

PERSONAL HISTORY

Claimant reported being the third of four children in her family and that she and her brother were adopted; the oldest two are biological. She was born in [REDACTED] and graduated from high school. She reported taking some college classes at: [REDACTED]; but no degree. I'd like to go back but I don't know for what.'

* * *

The Ph.D. psychologist provided the following additional information:

The information provided by the [REDACTED] was reviewed by this examiner. Claimant reported her seizures are grand mal and that her last one was on July 9th; 'There is no pattern that I can tell--my doctor wants to make sure I'm not drinking at all before they do anything with my medication--I'm afraid to go off; I don't want a seizure; maybe they will put me on another medication, I don't know.

DIAGNOSIS

Axis I--303.90 Alcohol Dependence; early partial remission; cocaine abuse; dysthymic disorder; pain disorder associated with both psychological factors and medical condition.

Axis V--GAF-50.

PROGNOSIS

Based on today's examination, claimant is capable of understanding directions given her that were meant to lead to the completion of a task(s); however, her ability to retain information would depend on her level of attention and concentration on any particular day; and her ability to follow through appears limited to her physical and emotional state at any particular time. Cheryl appears depressed; physically frail; and to be coping with sobriety on a daily basis. Her ability to be viewed as successful in a competitive environment appears contingent on the resolution/management of her physical health, emotional wellbeing, and substance abuse issues.

* * *

NOTE: The Ph.D. psychologist did not state claimant is totally unable to perform any work.

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The clinical evidence provided by the consulting Ph.D. psychologist shows a diagnosis and Axis I diagnosis of alcohol dependence, cocaine abuse, dysthymic disorder, and pain disorder. The Ph.D. psychologist provided an Axis V/GAF of 50. The Ph.D. psychologist did not state unequivocally that claimant is totally unable to work.

(10) The probative medical evidence, standing alone, does not establish an acute physical/exertional impairment expected to prevent claimant from performing all customary work functions. A recent report from [REDACTED] provided an impression of back pain; no current evidence of pancreatitis. There is no evidence from a licensed physician in the record which states that claimant is totally unable to work due to her physical impairments.

(11) Claimant thinks she is eligible for MA-P/SDA because of her seizures, her constant fatigue and her numerous mental issues (ADHD, depression, PTSD, etc.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration (SSA). SSA recently denied her claim. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA because of her pancreatitis, seizure disorder and multiple mental impairments.

DEPARTMENT'S POSITION

The department thinks that claimant has not established that she is totally unable to perform any work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department reported that the medical evidence of record does not establish any mental or physical limitations other than the alcohol and cocaine abuse, primarily alcohol abuse. The department denied MA-P/SDA eligibility based on Public Law 104-121 and 20 CFR 416.935 which prohibit a finding of disability when drug and alcohol are a material element in the impairments raised as the basis for disability.

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).

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 impairments limit claimant's 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 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 and 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/BEM 260/261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by 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 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. PEM/BEM 260/261.

Claimants, who are working and 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 Step 1.

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, it must have existed, or be expected to exist, for a continuous period of at least 12 months from the date of application. 20 CFR 416.909. The durational requirement for SDA is 90 days. PEM/BEM 261.

Also, to qualify for MA-P/SDA, the claimant must satisfy both the gainful work and duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit her physical or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c). Claimant meets the severity and duration requirements using the *de minimus* test.

Claimant meets Step 2.

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 a Listing.

Therefore, claimant does not meet Step 3.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a bartender and as a waitress. Claimant's previous work was medium work.

The Medical/Vocational evidence of record shows that claimant has a reduced ability to attend to skilled work (such as counting money or remembering orders given by patrons). Due to claimant's multiple mental impairments, she is unable to perform her prior semi-skilled work as a bartender and waitress.

Therefore, claimant meets 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 light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED] of [REDACTED] at 20 CFR 416.967.

The Medical/Vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Claimant is unable to perform skilled work because of her mental issues and a reduced ability to concentrate. Claimant is also taking psychotropic medications in combination with pain medications which compromise her memory and her ability to focus. Notwithstanding claimant's multiple mental limitations, she is able to perform unskilled work. This includes working as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED].

During the hearing, the claimant testified that a major impediment to return to her return to work was her chronic body pain and seizures. 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

Although claimant's pain and seizure medications do not totally eliminate her pain and seizure activity, they do provide limited relief.

It should be remembered that even though claimant has several significant mental and physical impairments, she does have notable residual work abilities. Claimant testified that she is able to perform many activities of daily living including dressing, bathing, cooking (sometimes), dishwashing, light cleaning (sometimes), mopping, vacuuming, laundry and grocery shopping. It is also significant that claimant is able to perform advanced computer techniques (sending emails) and has her own computer at home.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of mental and physical impairments. As noted above, claimant currently performs many activities of daily living, has a social life and is computer literate. In short, the collected evidence of record shows that claimant is able to perform unskilled sedentary work (SGA) at this time.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application. It is also important to note that the record contains ample information about claimant's drug and alcohol history. SHRT mentioned that this was a significant factor in this decision to deny eligibility.

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/BEM 260/261. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as described above.

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: October 12, 2010

Date Mailed: October 12, 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 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

cc:

