

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-41424

Issue No: 2009; 4031

Case No: [REDACTED]

Hearing Date:

November 9, 2010

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 November 9, 2010, in Detroit. The claimant personally appeared and testified under oath.

The department was represented by LaRonda McKenzie (Medical Contact Worker).

The Administrative Law Judge appeared by telephone from Lansing.

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 (July 2, 2009) who was denied by SHRT (July 13, 2010) based on claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 202.24 as a guide. Claimant requested retro MA-P for May and June 2009.
- (2) Claimant's vocational factors are: age--38; education—high school diploma; post high school education--none; work experience—certified nurse aide for a long-term care center, cashier, janitor and bookkeeper.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a Certified Nurse Assistant (CNA) at a long-term care center.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Pain;
 - (b) Uses pain medications for relief;
 - (c) Back pain;
 - (d) Colon issues;
 - (e) Side effects from prescription medication; and
 - (f) Depression.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (July 13, 2010)

MEDICAL SUMMARY:

Claimant is alleging disability secondary to back pain, colon issues and depression, all secondary to a motor vehicle accident (MVA). The claimant has a history of a MVA in 2001 with lumbar surgery in 2005. The claimant was examined, newly added evidence from 7/21/2009, and they were noted to be high over reactive during the examination. The claimant was seen by a Social Security Administration (SSA) psychiatric evaluation, newly added 6/30/2010, where it is noted that the claimant's only limitations are related to physical findings; it is noted also that the claimant has no observable physical issues. There are treating source reports, pages 70-75, noting that the claimant is totally disabled and that she retains the physical ability to perform less than sedentary tasks. Page 43 psychiatric evaluation, the claimant notes that they do not abuse substances but that they do seek marijuana for pain treatment. In a more recent psychiatric evaluation, the claimant denies all substance abuse, but notes that she has abused narcotic

pain medication in the past. There is no evidence offered relative to alleged colon issues.

ANALYSIS:

There is inconsistency in the medical opinions offered. What is noteworthy, at the recent psychiatric evaluation, physical issues by in large disappeared. During the 7/21/2009 examination it was noted it was difficult to assess claimant secondary to claimant being over reactive during examination. There is a documented history of MVA and surgical correction. There is an SSA Administrative Law Judge decision, page 112, noting that the claimant retains the ability to perform sedentary tasks of a simple and repetitive nature. The findings of the Medical Review Team determination are supported by this finding.

- (6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing (needs help), cooking and grocery shopping (needs help). Claimant uses a cane approximately five times a month. She uses a shower stool 15 times a month. She does not wear braces on her neck, arms or legs. Claimant was not hospitalized in 2009 or 2010.
- (7) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is not computer literate.
- (8) The following medical records are persuasive:
 - (a) A [REDACTED] psychiatric evaluation ([REDACTED] [REDACTED]) was reviewed. The psychiatrist provided the following history:

This is a 36-year-old single African American female. Claimant has a history of being in a car accident in 2001. She suffered severe back and abdominal injuries and has had surgeries done since then. She has been on narcotic pain medications and lists the times when she abused them. I think she used them more than what was prescribed for the day. According to her, the new problems are also related to her being in pain, i.e., her pain gets worse, her mood gets very angry or irritable or depressed. She was unable to give any further description of the symptoms and was somewhat vague. She has no suicidal or homicidal ideations. She has no auditory

or visual hallucinations. There is no history of any symptoms of bipolar disorder, other than history of anger and irritability. She is a patient at [REDACTED]. [REDACTED], and is on Abilify and sleep medication.

* * *

The psychiatrist provided the following DSM diagnoses:

Axis I—mood disorder, NOS and rule out narcotic abuse.

* * *

Axis V/GAF—48.

ADDITIONAL INFORMATION:

Claimant's history and symptoms are very vague and with a history of being on narcotic pain medication for several years, it is difficult to make a definite diagnosis. However, her mood problems are definitely related to her physical disability.

- (9) The probative medical evidence does not establish an acute (non-exertional) mental impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant testified that she is unable to work due to depression. However, the consulting psychiatrist's report (June 30, 2010) states:

Her history and symptoms are very vague and with a history of being on narcotic pain medications for several years, it is difficult to make a definite diagnosis.

* * *

Claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity.

- (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 reported that she has lumbar dysfunction due to a 2001 motor vehicle accident. Claimant was recently evaluated by the Social Security

Administration (SSA). The Social Security Administration noted that claimant had no observable physical issues.

- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. SSA denied her application. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

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).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

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. 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.

The department decides eligibility issues based on mental impairments using the following standards:

(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).

(d) Sufficient Evidence:

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) Chronic Mental Impairments:

...**Chronic Mental Impairments:** Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

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. 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. 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 Step 1.

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, has existed for at least 12 months and/or totally prevents all basic work activities. 20 CFR 416.909.

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

Applying the *de minimus* test, claimant meets Step 2.

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 did consider SSI Listings 1.02/.03/.04, 5.01, 11.14 and 12.04/.06/.09. SHRT decided that claimant does not meet any of the Listings.

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 Certified Nurse Aide at a long-term care center. This was heavy work. The medical evidence of record establishes that claimant was injured in a motor vehicle accident in 2001. In 2005, she had lumbar surgery. There is no recent evidence to establish that claimant is physically disabled based on her lumbar dysfunction.

Since claimant has not thoroughly documented her lumbar injury and its resulting sequelae, she has not met her burden of proof to show that she is totally unable to return to her work as a Certified Nurse Assistant. Since claimant is able to return to her previous work as a CNA, she 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.

Claimant has the burden of proof to show by the medical 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 a mental impairment (depression). However, the medical evidence submitted by claimant, primarily a consulting psychiatric evaluation (June 30, 2010), did not establish any significant mental impairments. The psychiatrist diagnosed the claimant's mental condition as Axis I—mood disorder, NOS and rule out narcotic abuse. The psychiatrist provided an Axis V/GAF of 48. The medical evidence of record does not establish a severe mental impairment.

Second, claimant alleges disability based on the sequelae resulting from a 2001 motor vehicle accident and subsequent lumbar surgery (2005). Again, claimant has failed to provide convincing medical evidence to show that the 2005 lumbar surgery has impaired her ability to perform her previous work as a CNA. Although claimant does apparently have minor limitations based on her back surgery, the medical evidence of record does not show that claimant is totally unable to perform sedentary work. In fact, the medical evidence shows that claimant is able to work as a ticket taker at a theater, as a parking lot attendant, and as a greeter for [REDACTED].

Third, claimant testified that a major impediment to her return to work was her back pain and the side effects of her pain medications. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

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 able to work as a ticket taker for a

theater, as a parking lot attendant, and as a greeter for [REDACTED]. Work of this type would afford claimant a sit/stand option.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. Also, it is significant that there is no "off work" order from claimant's primary care physician in the record.

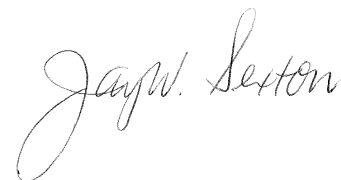
The department has established, by the competent, material and substantial evidence on the record that it acted in compliance with department policy when it decided that claimant was not eligible for MA-P/SDA. Furthermore, claimant did not meet her burden of proof to show the department's denial of her application was reversible error.

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

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 BEM 260/261.

SO ORDERED.



Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 16, 2011

Date Mailed: August 16, 2011

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.

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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:

