

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: 2010-42842  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 26, 2010  
Houghton 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 August 26, 2010, in Hancock, Michigan. The claimant personally appeared and testified under oath. The claimant's father was also present at the hearing.

The department was represented by David Elmlad (FIM) and Jim Tervo (FIS).

The record closed on August 26, 2010.

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/SDA applicant (June 16, 2010) who was denied by SHRT (July 20, 2010) due to claimant's ability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.13, as a guide.

(2) Claimant's vocational factors are: age--50; education--12th grade; post high school education--GED, claimant attended [REDACTED] for one year in the Corrections Officer program; work experience--certified nurse's assistant, motel maid and press operator.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2009 when she worked as a certified nurse's assistant in [REDACTED].

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

- (a) Status post nervous breakdown;
- (b) Cannot deal with people;
- (c) Arthritis in the back;
- (d) Sleep apnea;
- (e) Suicidal thoughts;
- (f) Memory dysfunction;
- (g) Bipolar disorder;
- (h) Anxiety disorder;
- (i) Back pain;
- (j) Arthritis; and
- (k) Asthma.

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

**OBJECTIVE MEDICAL EVIDENCE (July 20, 2010)**

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's impairments using SSI Listings 1.01, 3.01 and 12.01. SHRT decided that claimant does not meet any of the applicable Listings. SHRT denied disability

based on 20 CFR 416.968(a), due to claimant's ability to perform unskilled work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), laundry (sometimes) and grocery shopping (needs help). Claimant uses walking sticks 15 times per month. Claimant does not use a walker, wheelchair or shower stool. She does not wear braces. Claimant was not hospitalized in 2009 or 2010.

(7) Claimant has a valid driver's license but does not drive. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A June 16, 2010 Medical Examination Report (DHS-49) was reviewed. The internist provided the following current diagnoses:

- (1) Bipolar disorder;
- (2) History of substance abuse--in remission;
- (3) Attention Deficit Disorder;
- (4) Degenerative disc disease.

The physician states that claimant is totally unable to lift. She is able to walk less than two hours in an eight-hour day. She is able to sit less than six hours in an eight-hour day. He states that claimant is unable to do simple grasping, reaching, pushing-pulling or fine manipulating. He further states claimant is totally unable to operate foot controls.

The physician notes that claimant's hands go numb with repetitive action.

The physician states that claimant has the following mental limitations: Comprehension, memory, sustained concentration, following simple directions, reading/writing and social interaction.

- (b) A February 22, 2010 psychiatric review was evaluated.

The psychiatrist provided the following background:

‘Really edgy, hyper, excessive talking.’

Reports she took Celexa and Ambien for 2.5 weeks but had nausea that persisted on Ambien alone. She has resumed Cymbalta and stopped Ambien and Celexa. Reports her anxiety and depression are worse. She has lost her temper, screaming and hollering.’ Anxiety flashbacks: she has flashbacks and panics when people get mad at her. With Seroquel, she sleeps well, eight hours without awakening. Her appetite has increased, especially at night. She denies current suicidal plan or intent. Spending her time on baby-sitting for her four-year-old grandson and doing some housework, limited by her back pain. She denies current dizziness, nausea, or headaches. We spent time discussing her persistent request for Ritalin. Review the potential benefits, risks. I agreed to try a standard release form of Methylphenidate at low dose for two weeks. She denies abusing any substances. Someone has told her she should be working with [REDACTED], so a referral will be made.

#### MENTAL STATUS EXAMINATION:

Casually dressed, neatly groom. Matter is cooperative and assertive. Activity level is tense, but not fidgety or hyperactive, which is spontaneous, a little rapid, and normal tone. Thoughts appear well organized without psychosis. Thought content is negative, affect is mildly anxious with superficial smiling.

#### ASSESSMENT:

- (1) PTSD--anxiety and flashbacks continue. It was probably the Ambien that caused nausea, but she prefers to take Cymbalta instead of Celexa. Seroquel helps her sleep.
- (2) Borderline personality. Continues to be focused on obtaining benefits, which makes interpretation of her response to medication changes difficult.

- (3) Rule out mood disorder NOS--primarily appears anxious, not hypnomanic.
- (4) Rule out ADHD--I suspect many of her ADHD SX (symptoms) are due to anxiety, and therefore, not likely to improve with a stimulant. However, I am going to try a sustained release form of Methylphenidate while monitoring for risk of abuse and/or diversion. I gave her the expectation that if stimulants are so helpful, we would expect to see improvement in her functioning.
- (5) Alcohol dependence--in remission by her report.
- (6) Health concerns--no acute illness.
- (7) DSM diagnoses:

Axis I--posttraumatic stress disorder; other unspecified alcohol dependence in remission; mood disorder NOS; attention-deficit/hyperactivity disorder NOS.

\* \* \*

Axis V--GAF of 50.

- (c) A [REDACTED] [REDACTED] progress note was reviewed.

The social worker reported the following:

Claimant is seen. She reports that she 'almost had a nervous breakdown and had to go to the hospital.' She explained that she ran out of cigarettes and neither of her children will help her out for a long time. She described her 21-year-old son as a 'millionaire who works on the boats (on the Great Lakes) and stated he finally gave her a cigarette. She describes her mood as getting worse with more depression. She recognizes that a part of this is due to having so little money. She noted that her daughter almost threw her out of the house but didn't. She reports that she did hear from her attorney yesterday and that she has a hearing about her disability 'and that gave me a little spark of hope.'

\* \* \*

(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 [REDACTED] psychiatrist provides a diagnosis of posttraumatic stress disorder and alcohol dependence in remission. The psychiatrist provided an Axis V/GAF score of 50 (moderate). The psychiatrist did not state that claimant's mental impairments totally prevented her from performing all work activities.

(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. The June 16, 2010 internist report states that claimant is totally unable to work based on a diagnosis of bipolar disorder, history of substance abuse in remission, attention deficit disorder and degenerative disc disease. However, the medical evidence is contradictory because the Ph.D. psychiatrist noted that claimant did not have an acute illness.

(11) Claimant thinks she is eligible for MA-P/SDA because of her mental impairments in combination with her low back pain and arthritis.

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

## CONCLUSIONS OF LAW

### CLAIMANT'S POSITION

Claimant thinks she is eligible for MA-P/SDA due to a combination of her arthritis, back pain, sleep apnea and memory dysfunction.

### DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled light work. The department thinks that claimant's impairments do not meet/equal the

intent or severity of a Social Security Listing. The department thinks that the medical evidence of record shows claimant is capable of performing light, unskilled work. The department denied disability benefits based on Vocational Rule 202.13 as a guide.

### **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).

To determine to what degree claimant's mental impairments 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 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, pages 8 and 9.

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/PEM 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). SHRT decided that claimant meets the severity and duration requirement 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 certified nurse's assistant. Claimant's nursing work may be defined as medium work.

The medical/vocational evidence of record shows that claimant has difficulty standing for long periods of time in conjunction with chronic back pain. Based on the medical evidence of record, claimant is not able to return to her previous work as a certified nurse's assistant due to her limited inability to perform medium/heavy work for an eight-hour shift.

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 sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED]. [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. Notwithstanding claimant's moderate mental

(problems with concentration and dealing with people), claimant 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 her return to work was her 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 credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work. Although claimant's pain medications do not totally eliminate her pain, they do provide some relief.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her back pain and her mental limitations. Claimant currently takes care of her two-year-old granddaughter and performs chores around the house.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her back pain, secondary to her arthritis. Claimant currently performs activities of daily living, and takes care of her two-year-old granddaughter. This means that claimant is able to perform unskilled sedentary work (SGA).

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

The undersigned also notes that claimant continues to smoke. Claimant's smoking is contrary to her doctor's orders. Claimant's actions are contrary to the advice of her doctor. Smoking exacerbates claimant's arthritis and probably other conditions as well.

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 5, 2010

Date Mailed: October 5, 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:

