

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

IN THE MATTER OF:

[REDACTED]  
[REDACTED]  
[REDACTED]

Reg. No: 2010-7328

Issue No: 2009

Case No: [REDACTED]

Hearing Date:

January 5, 2010

Calhoun 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 January 5, 2010, in Battle Creek. The claimant personally appeared and testified under oath.

The department was represented by Brenda Baldwin (Lead 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)?
- (2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

**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 applicant (September 16, 2008) who was denied by SHRT (November 24, 2009), due to claimant's ability to perform the duties normally associated with her past relevant work as a cook. Claimant requests retro MA-P for June, July and August 2008.

- (2) Claimant's vocational factors are: age--44; education—9<sup>th</sup> grade; post high school education—GED and a truck driver's certificate from [REDACTED]; claimant also holds a CDL license which was issued in 1995; work experience—laundry aide for the [REDACTED], caretaker for husband's mother and long haul truck driver.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2008 when she worked as a laundry aide for the Veterans Administration.
- (4) Claimant has the following unable-to-work complaints:
  - (a) Bipolar disorder;
  - (b) Borderline personality disorder;
  - (c) Bone spurs;
  - (d) Neck/shoulder dysfunction;
  - (e) Cysts on her spine at L4-L5;
  - (f) Herniated discs;
  - (g) Scoliosis;
  - (h) HNT;
  - (i) Sugar diabetes; and
  - (j) Blood sugar dysfunction.
- (5) SHRT evaluated claimant's medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (11/24/2009)**

**MEDICAL SUMMARY:**

Claimant alleges disability secondary to cervical fusion, scoliosis, stomach issues, depression and anxiety. There are multiple references to degenerative disc issues, one of which resulted in the multi-level fusion of claimant's cervical spine. There is also mild scoliosis noted without nerve impingement. The claimant at one point alleges a history of fibromyalgia without any significant findings to support this allegation. Also, there is an allegation related to stomach issues without any documentation

There is a lengthy history of psychiatric treatment for bipolar and anxiety disorder. Not discussed recently is the fact that the claimant admits to a lengthy history of polysubstance abuse: crack, cocaine, speed and marijuana. The claimant is noted to be mildly to moderately impaired and capable of managing potential benefits.

**ANALYSIS:**

The Social Security Administration has an older, 11/2008, denial which does cover the period of this application as well. In this decision, it was found that the claimant has the ability to perform light exertional tasks of a simple and repetitive nature. The medical evidence in the file supports these findings for the current application.

**RECOMMENDATION:**

The claimant is 44 years old, has a high school education with light, unskilled and skilled employment. The claimant retains the ability to perform light exertional tasks of a simple and repetitive nature. As such, the claimant retains the ability to perform the duties normally associated with her past relevant work as a cook and waitress. Medicaid-P, retroactive Medicaid-P and State Disability Assistance are denied by this decision. Listings 1.04, 5.00 and 12/04/06 were considered in this determination.

\* \* \*

- (6) Claimant lives her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, and dishwashing, light cleaning, laundry (needs help), and grocery shopping (needs help). Claimant does not use a cane, walker or wheelchair. Claimant uses a shower stool approximately four times a month. Claimant does not use braces. Claimant has not received any in-patient hospital care in 2009 or 2010.
- (7) Claimant has a valid driver's license and drives an automobile approximately four times a month. Claimant cares for her dog and walks occasionally. Claimant continues to smoke (21 cigarettes a day) contrary to the advice of her physician that she needs to quit (AMA).
- (8) The following medical records are persuasive:
  - (a) A December 26, 2008 DDS clinical interview and psychodiagnostic assessment was reviewed. The Ph.D. psychologist provided the following summary of complaints:

Claimant stated that her biggest problem is that she has difficulty walking and has numbness in her left

hand and arm. She stated that she feels weak in her left side from surgery, which she had earlier this year. She had a ruptured disc September 3, 2008 and she went to the emergency room at BCHS at this time. She stated that she experienced electric shock sensations in her left leg for several months. She stated that she was put on leave at the laundry for the [REDACTED] August 21, 2008. She stated that she hired in at the Veterans laundry on September 2, 2008, and she ruptured a disc two days later. She then stated that she was actually diagnosed with a ruptured disc on September 5, 2008 and had 'rods and bolts' put in her back at that time. She stated that she did not go back to work and that she might be laid off permanently. Then claimant stated that her injury occurred on August 28, 2008, only a couple of days after she hired on at the laundry. She admitted that she had an interview on September 2, 2008 and 'lied' to the [REDACTED] about having a pre-existing back condition.

Claimant stated that she also has left leg weakness, which is more of a problem than her right leg. She stated that she also has weakness and some numbness in the two small fingers of her left hand extending to the elbow. She stated that she also has neck pain and is exhausted all of the time. She stated that she moves more slowly and that she cannot do anything fast anymore. At this point, with a good deal of anger, she stated, 'I'm damn mad because I cannot get anyone to help me.'

Claimant expressed continued anger. She stated, 'I don't fit in anymore. I wish I was not even born. I killed my own puppy when I was 10 or 11 years old by slamming his head repeatedly on the pavement. I stuck objects through other animals until they died [she smiled and looked at her daughter, who sat in during the interview]. I am at the point that I'm about ready to explode. I don't want be locked up with a bunch of fools. I isolate myself so I won't hurt anybody.'

\* \* \*

Claimant has also been seen at [REDACTED] in [REDACTED] on a few occasions as far back as [REDACTED].

It appears as though claimant has not been motivated for treatment with that facility and has been discontinued by that agency. Nevertheless, in [REDACTED], claimant was diagnosed at [REDACTED] with major depressive disorder, recurrent, moderate; borderline personality disorder; and fibromyalgia, back pain, and shoulder pain. She was given a GAF score of 53.

\* \* \*

The consulting psychologist provided the following diagnoses:

Axis I—diagnosis unknown due to a missing page.

Axis V/GAF—45.

The consulting psychologist provided the following comments:

Claimant is an unfortunate individual who seems to have had a good deal of bad luck in life, but has also made a lot of bad decisions, along with having an extremely poor upbringing. It would appear that her being sexually abused has left permanent scars and would seem to have compromised much of her bitterness, resentment, anger, as well as occasional homicidal ideation towards some males. However, there is some concern on the part of this exam as to the possibility that this claimant may not have been totally taken advantage of by some of her so-called perpetrators.

\* \* \*

**Claimant stated that she feels incapable of working at this time**, and this examiner would agree with that. She stated that she would be willing to work if given an opportunity, but also questions whether she would be able to work with others. She also mentioned she has bone spurs in both of her feet.

\* \* \*

The consulting psychologist provided the following concluding observations:

Lastly, because of the strong personality disorder component in this individual (borderline personality disorder), the prognosis for this individual is seen as

guarded. Today, claimant did not seem to be optimistic about her future. She seemed to project an attitude which would be highly impervious to change. Of all of this said, it is doubtful whether claimant will be able to become gainfully employed, unless she works only part-time, and is in an environment in which she has virtually no contact with other people, particularly supervisors.

\* \* \*

The consulting psychologist provided a Mental Residual Functional Capacity assessment. The assessment shows that claimant's mental residual functional capacity is normal in seven areas. It is moderately limited in 12 areas and it is markedly limited in four areas.

(b) A [REDACTED] report.

The neurosurgeon provided the following background:

Claimant returned with her husband. Under my care, she was taken to surgery on 9/03/2008. She had an extremely severe cervical cord compression syndrome with Lhermitte's, subjective numbness, weakness in her left hand and periodic episodes of weakness in her left leg. She tells me that this all began at the end of July when she awoke with neck pain and progressive numbness in her extremities. She was seen in the [REDACTED] and given pain medication. She was seen at the [REDACTED] and given pain medication. She came in through the [REDACTED] at [REDACTED] because of increasing numbness and weakness of her left hand, left leg and radicular pain. She was seen in consultation by me. MRI showed extreme severe cervical cord compression syndrome, secondary to herniated disc at C6-C7. She was taken to surgery and given pre-op steroids, spinal cord monitoring and underwent a discectomy, partial corpectomy and fusion at C6-C7. Post surgery, her weakness had worsened in the recovery room. An emergent MRI was compatible with no pressure on the spinal cord and T2 changes compatible with edema. Radiology was thinking as her cord

expanded, she developed cord edema. I reviewed that with neuroradiology and I concur.

She was put on a steroid protocol and had rapid improvement, however, by the time of discharge she was eating and the swallow study was normal. She did have residual weakness in her left hand and left leg and was walking with a walker.

The onset of her symptoms was in July but the episode that brought her into [REDACTED], admitted and then consulted by me was lifting trays at the [REDACTED] the second day on the job when she felt the sudden worsening of the numbness in the left arm and leg and weakness in her left hand as well as weakness of her upper left leg. That was the precipitating event that brought her back to the ER.

**EXAMINATION:**

Today in the office her incision is dry and healed. She has a slight dysphonia. She is describing no difficulty at this time with eating. No complaints referable to her bowel or bladder. Right arm, right hand and right leg strength is 5/5. Left upper extremity deltoid, biceps, triceps is 5/5. Grip, abduction and adduction as well as extension are 4/5. Left hip flexor is 4 to +4/5, quads and hamstrings +4/5, plantarflexion and dorsiflexion 4/5. Pinprick and touch are intact throughout. She is somewhat anxious, appears depressed and is a bit tearful. Negative Hoffman's. No spasticity and no response to plantar stimulation.

**NOTE:** The neurosurgeon's records did not state that claimant was totally unable to work.

- (9) Claimant alleges a severe mental impairment based on the psychiatric treatment she has received for bipolar disorder and anxiety disorder. Claimant was evaluated by a Ph.D. psychologist who did not state that claimant was totally unable to work.
- (10) Claimant alleges a severe physical impairment based on her cervical fusion, scoliosis, and stomach issues. Claimant also thinks that the sequelae from her multi-level fusion of the cervical spine disqualify her from all work. However, the probative medical evidence does not

establish an acute (exertional) physical impairment, or combination of impairments, which prevent claimant from performing all customary work functions for the required period of time. The neurosurgeon did not state that claimant was totally unable to work. The medical evidence of record does indicate that claimant's physical impairments prevent her from doing work that requires heavy exertion such as climbing ladders and stairs; likewise, claimant would be unable to perform jobs which require constant standing for the entire eight-hour shift. At this time, however, there is no probative medical evidence to establish a severe disabling condition that totally prevents claimant from all sedentary work activities.

- (11) Claimant recently applied for SSI benefits with the Social Security Administration. Her application was denied. Claimant filed a timely appeal.
- (12) According to the research performed by the SHRT team, claimant has a lengthy history of polysubstance abuse, crack, cocaine, speed, and marijuana. The record indicates that claimant no longer participates in these unlawful activities, but the possibility that there are lingering effects from her polysubstance abuse must be considered.

### **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).

"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).

The department decides eligibility issues arising out of 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 purposes. BEM 260. "Disability," as defined by MA-P 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.

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 12 months and/or totally prevents all current work activities. 20 CFR 416.909.

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

Using the *de minimus* standard, 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 the Listings.

However, SHRT evaluated claimant's eligibility using SSI Listings 1.04, 5.00 and 12.04/.05. SHRT decided that claimant does not meet any of the applicable SSI Listings. SHRT's evaluation of the applicable SSI listings is hereby incorporated by reference.

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 last worked as a laundry aide for the local VA Hospital. Because of claimant's recent multi-level fusion of the cervical spine, claimant is unable to do physically demanding work for an eight-hour shift. This means claimant is unable to return to her previous work as a laundry aide for the local VA Hospital.

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.

**Claimant has the burden of proof** to show by the medical/psychiatric evidence in the record that her combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on a combination of mental impairments: depression, anxiety and bipolar disorder. Unfortunately, the medical evidence of record does not substantiate that claimant's current mental impairments totally preclude her from performing all work activity. None of the consulting psychologist who provided the reports on claimant's mental status reported that she was totally unable to work.

Second, claimant alleges disability based on a combination of physical impairments: cervical fusion, scoliosis, stomach issues and status post multi-level fusion of the cervical spine. None of the consulting physicians who reported on claimant's physical condition stated that she was totally unable to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combined mental/physical impairments. Currently, claimant performs many activities of daily living (dressing, bathing, cooking, dishwashing, light cleaning, laundry (needs help) and grocery shopping). Claimant drives an automobile approximately four times a month. Claimant is computer literate.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform 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].

In summary, 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 claimant was not eligible for MA-P. Furthermore, claimant did not meet her burden of proof to show the department's denial of her application was reversible error.

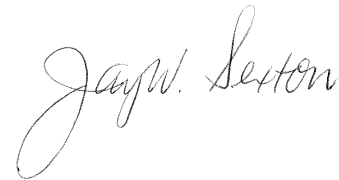
Based on this analysis, the department correctly denied claimant's MA-P application based on Step 5 as presented above.

**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 disability requirements under BEM 260.

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

SO ORDERED.



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

Date Signed: September 6, 2011

Date Mailed: September 6, 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.

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

2010-7328/JWS

cc:

