

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-10320

Issue No: 2009; 4031

Case No: [REDACTED]

Load No:

Hearing Date:

February 24, 2011

Allegan 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 February 24, 2011, in Allegan. The claimant personally appeared and testified under oath.

The department was represented by Mariah Schaefer (AP Supervisor).

The Administrative Law Judge appeared by telephone from Lansing.

By the agreement of the parties, the record closed on February 24, 2011.

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 (July 21, 2010) who was denied by SHRT (January 7, 2011) due to claimant's ability to perform unskilled light work. Claimant requests retro MA for April, May and June 2010. SHRT relied on Med-Voc Rule 202.20 as a guide.
- (2) Claimant's vocational factors are: age--47; education—10th grade; post high school education--GED; work experience—counter worker and cashier for [REDACTED], and cosmetologist.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since 2007 when she worked as a counter person and cashier for a dry cleaning company.
- (4) Claimant has the following unable-to-work complaints:
 - (a) Asthma;
 - (b) Shortness of breath;
 - (c) COPD/emphysema;
 - (d) Hypertension;
 - (e) Hypothyroidism;
 - (f) Neck dysfunction;
 - (g) Mitral valve prolapse;
 - (h) Status post surgery on right thumb;
 - (i) Depression.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (January 7, 2011)

* * *

MEDICAL SUMMARY:

A mental status dated 10/10 showed the claimant presented as logical and organized. She was able to respond to questions appropriately overall. She denied hallucinations and delusions. She presented as depressed and somewhat anxious and somewhat friendly for brief moments. Her affect was flat at times, but also somewhat emotional and in tears at times. Diagnoses included major depressive disorder and adjustment disorder. The medical source statement indicated the claimant was able to maintain appropriate eye contact and follow simple instructions (records from DDS).

In 2/10, the claimant's lungs were entirely clear without wheezes or crackles. Heart sounds were normal. Neurologic examination was grossly non-focal. Her FEV1

was 1.39 and FVC was 1.75. No post-bronchodilator values were done. She had shortness of breath which may have been due to asthma, but could be related to deconditioning and her weight. Smoking cessation was recommended (records from DDS).

In 7/2010, claimant's mood was pleasant. Her reflexes were 2+ in the upper extremities. Muscle strength showed give-way weakness bilaterally. Sensation was diminished in a C-3 distribution on the right to pinprick, but was otherwise intact. She had full range of motion of the neck (page 19).

In 8/2010, claimant was 60.75 inches and 190 pounds. Breath sounds were clear to auscultation and symmetrical. There was no clubbing, cyanosis or edema. Grip strength was intact and dexterity was unimpaired. Motor strength was 5/5 and tone was normal. Sensory appeared intact to light touch. Reflexes were 2+ and symmetrical. Gait was normal (records from DDS).

* * *

RECOMMENDATION:

Claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The medical evidence of record indicates claimant retains the capacity to perform a wide range of unskilled, light work. In lieu of a detailed work history, claimant will be returned to other work.

Therefore, based on claimant's vocational profile (younger individual, 14 years of education and history of unskilled work) MA-P is denied using Vocational Rule 202.2 as a guide. Retroactive MA-P was considered in this case and is also denied.

SDA is denied per PEM 261 because the nature and severity of claimant's impairments would not preclude work activity at the above-stated level for 90 days.

* * *

- (6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), light cleaning (sometimes), grocery shopping (sometimes). Claimant does not use a cane, walker, wheelchair or shower stool. Claimant does not wear

braces. Claimant was hospitalized in 2010 for approximately four days to receive treatment for breathing dysfunction and kidney dysfunction. Claimant was not hospitalized in 2011.

- (7) Claimant does not have a valid driver's license and does not drive. Claimant is computer literate and has a pc at home.
- (8) Claimant's medical evidence was correctly summarized by SHRT. See Paragraph #5, above.
- (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. Claimant's mental status was evaluated by a consulting Ph.D. psychologist. The Ph.D. psychologist evaluated the claimant's mental status as follows: Claimant appeared to be oriented to reality during the course of this evaluation. Claimant displayed a low self esteem. Claimant appeared to be motivated to participate in this evaluation. This claimant had insight into her condition, and did not tend to exaggerate symptoms. The Ph.D. psychologist reported the following DSM diagnoses: major depressive disorder, recurrent, moderate; Adjustment Disorder, unspecified. Axis V/GAF—49 (moderate).
- (10) The probative medical evidence, standing alone, does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions. A consulting physical examination (August 20, 2010) provided the following conclusions: (1) Chronic obstructive pulmonary disease/asthma. The chest was clear, but this was probably because of her use of prednisone at present. Pulmonary function studies might give a better indication of problem and disability, but should be performed when she is no longer taking prednisone. (2) Neck pain: Apparently, she has a herniated disc in this area. Range of motion was normal, although performance was painful. (3) Co-morbidities: Mitral valve prolapse, hypertension, hypothyroidism and depression. The consulting internist did not report that claimant was totally unable to work.
- (11) Claimant recently applied for federal disability benefits (SSI) with the Social Security Administration. The impairments reported to SSA are similar to those under review here. SSA recently denied claimant's SSI claim. 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).

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 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.

Claimants who are working and otherwise 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. Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the 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 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.

However, SHRT noted that the claimant's pulmonary function study showed an FEV 1 of 1.39, which does not meet the listing level of 1.25 or less for her height. SHRT further notes it is also expected that the FEV 1 would likely improve what post-bronchodilators.

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 presser, counter clerk and cashier for several dry cleaning stores. This was light work.

The medical evidence of record shows that claimant has significant breathing problems along with a diagnosis of mitral valve prolapse, hypothyroidism, high blood pressure, asthma and a herniated disc. Since claimant's breathing impairments may be related to her exposure to dry cleaning fumes, she is not able to return to her previous work as a presser, counter clerk and cashier at a dry cleaning store.

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. 20 CFR 416.920(f). 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] at 20 CFR 416.967.

Based on the medical evidence of record, considered in its entirety, claimant is able to perform unskilled sedentary work that does not involve being exposed to dry cleaning fumes on a continuous basis. Notwithstanding claimant's combination of mental and physical impairments, she is able to do the following simple, unskilled sedentary jobs: as a ticket taker for a theater, 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 fatigue and shortness of breath relating primarily to her asthma, COPD and emphysema. The evidence of record does show, however, that claimant's prescription medications do provide significant relief, although the relief is temporary. Unfortunately, evidence of breathing dysfunction, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about her breathing dysfunction, coupled with her heart condition (mitral valve prolapse) is credible and profound, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her combination of impairments. The consulting medical experts who evaluated claimant (a Ph.D. psychologist and an internist) did not report that claimant was totally unable to work. Claimant did not provide an off work notice from her primary physician. The collective medical evidence shows that claimant is able to perform unskilled sedentary work (SGA) as described above.

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

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 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 2, 2011

Date Mailed: June 3, 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

cc:

