

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: 2008-28338
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 12, 2008
Newaygo 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 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 (May 4, 2008) who was denied by SHRT (August 26, 2008) based on claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.18 as a guide. Claimant requests retro-MA for February, March and April 2008.

(2) [REDACTED]

[REDACTED]

(3) Claimant has not performed Substantial Gainful Activity (SGA) since November 2007 when she was a cashier/stocker at [REDACTED]

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

- (a) Severe depression;
- (b) Neck bone fusion;
- (c) Balance problems;
- (d) No big toe on left foot;
- (e) Clumsy;
- (f) Sleeping dysfunction;
- (g) Headaches.

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

OBJECTIVE MEDICAL EVIDENCE (August 26, 2008)

A DHS-49D form showed claimant's speech, thoughts and memory were clear. Yet, further down on the form, in section IV, it was noted that claimant's memory was poor (page 43). Diagnosis included bipolar mood disorder, paranoid schizophrenia, depression and anxiety. However, the form was completed by the family physician (page 44). On the DHS-49 form, completed by the same doctor, the physician indicated claimant had subjective decreased strength. Her neurological exam is normal and her speech was normal (page 41).

A mental status exam, dated 7/2008, showed claimant's speech was clear and understandable. She reported that she heard voices a couple of times (page 23). Her affect was somewhat flat, but the examiner felt she was attempting to significantly exaggerate her

symptoms which made an accurate diagnosis difficult. She was scheduled for an IQ test, but it was not done because it was felt that claimant was not cooperating and the scores would not have been valid. Her presentation makes accurate diagnosis impossible, per the examiner (page 24). The diagnoses were depressive disorder, NOS and malingering (page 25).

A mental status exam in 6/2008 showed claimant's speech was clear. Claimant reported she thinks people spy on her and stand in the trees where she lives. She sometimes thinks she hears voices (page 16). Claimant was felt to be attempting to exaggerate her symptoms. On the Leiter non-verbal IQ test, claimant showed an age of 3 years 6 months, or an IQ of 11, which is obviously not accurate (page 17). Diagnosis included depressive disorder, NOS and malingering (page 18).

[REDACTED]. Fine and gross dexterity was intact. Sensory was full. The spine was notable for a mild rotatory scoliosis, with the left shoulder being 1 centimeter higher than the right. She had some tenderness in the mid cervical area. Straight leg raising was negative. Gait was normal. Sensory was full in the lower extremities. She had an amputation at the IP joint of the left great toe. She made good eye contact and her thoughts were well organized with appropriate verbalizations (page 7).

ANALYSIS:

A DHS-49D form, completed by a family doctor, showed claimant's speech and thoughts were clear. However, he indicated she had bipolar disorder, paranoid schizophrenia, depression and anxiety. Two mental status exams showed claimant was malingering. At the physical exam, in 6/2008, she was noted to make good eye contact and her thoughts were well organized and appropriate. She had some mild rotatory scoliosis without any neurological abnormalities noted. Gait and dexterity were normal.

(6) Claimant lives alone but receives help from her daughter with some household chores. Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing (sometimes), cooking (sometimes), dish washing, light cleaning, laundry and grocery shopping (needs help). Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces on her neck, back, arms or legs. Claimant did not receive in-patient hospital treatment in 2007 or 2008.

(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) The SHRT summary of claimant's medical evidence is presented at paragraph #5, above.

(9) The probative psychological evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There is a DHS-49D psychiatric/psychological examination report (June 26, 2008) which provides the following diagnoses: bipolar mood disorder, paranoid schizophrenia, depression and anxiety. However, the June 26, 2008 DHS-49D conflicts with the mental status examination dated July 2008. The June 21, 2008 DDS/PhD psychological report states the following:

Claimant was felt to be attempting to exaggerate her symptoms which makes accurate diagnosis difficult. When told she was going to be given some tests for concentration, claimant was unable to recite the alphabet or count to 5.

Claimant's IQ test score was 3 years, 6 months, her IQ score was 11 which is obviously not accurate.

Claimant was felt to be attempting to exaggerate her symptoms. She may have some learning problems, but it was impossible to tell on the basis of the examination today.

Because of the significant conflict among mental health evaluators, there is no reliable evidence to establish a severe mental impairment.

(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. The treating physician, on a DHS-49 physical examination form, stated that claimant's diagnosis was subjective decreased strength. The physician did not report that the claimant is totally unable to work due to a physical impairment.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform unskilled light work.

Based on claimant's vocational profile [closely approaching advanced age (52) with a 10th grade education and a history of unskilled work], the department denied MA-P eligibility based on Med-Voc Rule 203.18, as a guide.

The department denied SDA based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for 90 days.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis,

what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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 a severe mental impairment limits 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 or 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 260/261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by a 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 is 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), are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The vocational evidence of record shows claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability test.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Claimant must establish that she has an impairment which is expected to result in death, or has lasted, or is expected to last for 12 months, and totally prevents all basic work activities.

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).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

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.

Therefore, claimant does not meet the Step 3 disability test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a cashier/stocker at [REDACTED]. Claimant's work was light work.

The medical evidence of record establishes that claimant is able to perform sedentary/light work on a regular basis for an 8 hour shift.

The psychological reports in the record are contradictory, and cannot be the basis for a finding of a severe impairment.

The medical reports on claimant's physical conditions do not establish a severe impairment that would totally prevent claimant from performing sedentary work.

Therefore, claimant does not meet the Step 4 disability test.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application based on Step 4 of the sequential analysis, 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/SDA disability requirements under PEM 260/261.

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: December 29, 2008

Date Mailed: January 5, 2009

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 mailing 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/kgw

