

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: 200711060
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 26, 2007
Montcalm and Gratiot 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 July 26, 2007 in Stanton. Claimant personally appeared and testified under oath.

The department was represented by Richard Stilson (FIM).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. Claimant did not submit new medical records by the Record Close Date.

ISSUES

Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work on a sustained basis 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 (October 25, 2006) who was denied by SHRT (June 7, 2007) due to claimant's ability to perform a wide range of medium work. SHRT cited Med-Voc 203.28 as a guide.

(2) Claimant's vocational factors are: age—45; education—9th grade; post high school education—GED; work experience—direct care worker for an adult foster care home and dishwasher at a restaurant.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2001 when she worked as a direct care worker at an adult foster care home.

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

- (a) Fibromyalgia;
- (b) Degenerative arthritis;
- (c) Stomach dysfunction;
- (d) Acid reflux;
- (e) Status post left shoulder (rotator cuff) surgery
- (f) Left rotator cuff dysfunction;
- (g) Unable to walk upstairs;
- (h) Falls a lot.

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

OBJECTIVE MEDICAL EVIDENCE (June 7, 2007):

In 7/2006, claimant reported chronic pain in the muscles and joints (page 12). On exam, claimant had tenderness on the abdominal exam in the left lower quadrant and the right lower quadrant. The extremities exam was within normal limits. Neurological and mental status findings were within normal limits (page 13).

X-rays of the lumbar spine dated 11/2005 showed Grade I L5/S1 anterior spondylolisthesis, unilateral left sided pars interarticularis defect at that level and mild degenerative changes (page 14). An MRI of the lumbar spine, dated 6/20/2006 shows Grade I anterior spondylolisthesis of L5/S1 and mild disc bulge at L1-2 (page 15).

A DHS-49 form in the file indicated claimant's current diagnosis included gastroesophageal reflux disease and gastritis (page 3). It was noted that claimant occasionally used a crutch (page 4).

ANALYSIS:

Claimant has some low grade spondylolisthesis without any evidence of any significant neurological abnormalities. Mental status was also noted to be within normal limits. To give claimant the benefit of any doubt, she will be limited of heavy lifting.

* * *

(6) Claimant performs the following activities of daily living, dressing, bathing, cooking, dishwashing (sometimes), light cleaning, laundry and grocery shopping (needs help). Claimant lives with her brother and sister-in-law.

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

(8) The following medical records are persuasive:

An October 27, 2006 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnosis: gastroesophageal reflux and gastritis.

The physician does not report any work limitations.

(9) The prohibitive medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The examining physician provided the following diagnoses: GERD and gastritis. The internist's report, when taken in conjunction with the medical evidence

of record does not establish a severe physical impairment that would totally preclude substantial gainful activity.

(10) Claimant's most prominent complaint is the body pain she experiences secondary to her fibromyalgia. Claimant is also status post left rotator cuff surgery.

(11) Claimant has applied for federal disability benefits; her application was denied by the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant is participating in the DHS Adult Medical Program (AMP). Claimant reports that she is finding it difficult to find physicians and dentists who will accept the plan.

DEPARTMENT'S POSITION

The department thinks that claimant has a residual functional capacity to perform a wide range of medium work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

Based on claimant's ability to perform medium work, the department consulted Med-Voc Rule 203.28. Using claimant's vocational profile (younger individual, 45) with a GED education, the claimant must be denied based on Med-Voc Rule 203.28 as a guide.

The department denied SDA because the claimant has not established that she is totally unable to work for at least 90 days.

LEGAL BASIS

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 Family Independence Agency 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 does 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).

The claimant has the burden of proof to show by a preponderance of the medical evidence in the record that her physical impairments meet the department's definition of disability for MA-P and SDA purposes. PEM 260 and 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 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, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The Medical/Vocational evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 disability requirements.

STEP #2

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

A severe impairment is defined as a verified medical condition which totally precludes substantial employment. Duration means a severe impairment is expected to last for 12 continuous months or result in death. SHRT found that claimant meets the severity and duration requirements.

The Administrative Law Judge agrees.

Therefore, the claimant meets the Step 2 disability requirements.

STEP #3

The issue at Step 3 is whether claimant meets the Listing of Impairments and the SSI regulations. Claimant does not allege that she meets any of the Listings.

Therefore, the Administrative Law Judge concludes that claimant does not meet the Step 3 disability requirements.

STEP #4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a direct care worker for an adult foster care.

Claimant's work at the adult foster care home would be medium work.

Since the medical evidence of record does not establish any restrictions on claimant's ability to work, she is able to perform her previous work as a direct care worker. There is no medical evidence to establish any limitations in her ability to sit, stand, walk or to use her hands/arms or feet/legs normally.

Based on the medical evidence of record, claimant is able to perform her previous work as a direct care worker.

STEP #5

The issue at Step 5 is whether claimant has a 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] at 20 CFR 416.967.

The medical/vocational evidence of record establishes that claimant is able to perform medium work. The claimant's vocational profile shows a younger individual (age 45) with a GED education and a history of unskilled work as a direct care worker for an adult foster home.

The medical/vocational evidence of record, when taken as a whole, shows that claimant is able to perform Substantial Gainful Activity. This includes working as a security guard, as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED].

During the hearing, claimant testified that the major impediment for her return to work was with muscle and joint pain, secondary to fibromyalgia. Evidence of pain, alone, is insufficient to establish disability.

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.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work, based on her fibromyalgia and rotator cuff dysfunction. Claimant currently performs many activities of daily living, has a driver's license, and has an active social life. Therefore, the Administrative Law Judge concludes that claimant is able to perform Substantial Gainful Activity.

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 and 261.

Claimant is not eligible for MA-P/SDA based on Step 5 of the sequential analysis procedure, presented 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: August 3, 2009


Date Mailed: August 4, 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 mailing date of the rehearing decision.

JWS/tg

cc:

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