

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: 2007-16450  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 29, 2007  
Ingham 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, an in-person hearing was held in Lansing on August 29, 2007. Claimant personally appeared and testified under oath.

Claimant was represented at the hearing by [REDACTED].

The department was represented by Ellen Arman (Lead Worker).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirements so that her new medical evidence could be reviewed by SHRT.

Claimant did not submit new medical records by the Record Close Date.

ISSUE

(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 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 (September 28, 2006) who was denied by SHRT (August 3, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age--48; education—9th grade; post-high school education—GED, and cosmetology classes; work experience—administrative assistant to advertising vice president, private care nursing, childcare worker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she was an administrative assistant to an advertising vice president in 2005.

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

- (a) Lupus;
- (b) Hand swelling;
- (c) Pain on right side;
- (d) Sore joints;
- (e) Chronic fevers;
- (f) Leg weakness.

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

**OBJECTIVE MEDICAL EVIDENCE (August 3, 2007):**

In 1/2007, her rheumatologist noted lupus with a normal physical exam, except for some synovitis of the hands (Pages 6-7). According to a 2/2007 consultative exam, she was 5'3" tall and weighed 243 pounds. Her blood pressure was normal. She had full range of motion of all joints, with no neurological deficits. Her lungs were clear and her gait was normal (Pages 3-5).

ANALYSIS: There was no evidence of a disabling impairment.

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(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, laundry (sometimes) and grocery shopping.

(7) Claimant has a valid driver's license and drives an automobile approximately 12 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] report was reviewed:

The physician provided the following history:

The patient is a 48-year-old female who is here for general internal medicine exam to evaluate her disabilities. The patient states that her main disability is related to systemic lupus erythematosus. This was diagnosed back in 2001; however, she had been having symptoms for a few years prior to the diagnosis being made. She states her main problems back then were hair loss, significant back pain, and generalized stiffness. She has been treated with Plaquenil and Diclofenac, which have helped somewhat. She still states she has generalized pain in the left side of the lower back as well as the abdomen, and she does get occasional flares of symptoms as well.

The physician provided the following assessment:

Systemic Lupus erythematosus. The patient was diagnosed with this back in 2001, after having a few year of symptoms. Unfortunately, she does have intermittent flares of her symptoms as well. Currently, she has been having some generalized pain as well as more specific pain in the lower lumbar region in the abdomen. On exam today, she did have some tenderness in these areas, but no evidence of acute inflammation in any of the joints. At this point, I think she really would only be able to do light, sedentary type activity.

\* \* \*

- (b) A January 24, 2007 medical examination report (DHS-49) was reviewed.

The physician provided the following current diagnosis:

Lupus.

The physician provided the following work related limitations:

Claimant is able to lift 25 pounds occasionally. She is able to stand and walk no more than two hours. She is able to sit no more than 4 ½ hours. Claimant is not able to use her hands/arms for normal work activities. However, she can use both her legs and feet normally. Claimant has no mental limitations.

- (c) A December 1, 2006 medical examination report (DHS-49) was reviewed. The physician provided the following diagnosis: Constipation, hemorrhoids and dysplasia.

The physician provided the following work related limitations:

Claimant can lift less than ten pounds frequently and can lift up to twenty pounds occasionally. Claimant is able to stand or walk at least two hours in an eight-hour day. She is able to use her hands normally for simple grasping, reaching, pushing/pulling and fine manipulating. Claimant is able to use her feet/legs normally.

- (d) A July 1, 2005 Medical Needs form (FIA-54A) was reviewed. The physician states the following diagnosis: Lupus.

The physician states that claimant can work at any job but is unable to work at a job that involves lifting or prolonged sitting.

(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. There is no evidence in the record that claimant has ever been evaluated by a PhD psychologist or a psychiatrist.

(10) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do show a diagnosis of Lupus. Recently, an internist's reported that claimant has lupus with tenderness in the lower lumbar region and abdomen, but no evidence of acute inflammation of the joints.

(11) Claimant's most prominent complaints are joint pain, back pain and fevers.

(12) Claimant has applied for federal disability benefits with the Social Security Administration; her application was recently denied.

## CONCLUSIONS OF LAW

### **CLAIMANT'S POSITION**

Claimant's position is summarized in the [REDACTED] hearing request as follows:

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Claimant is diagnosed with systemic lupus erythematosus (LSE) with chronic joint pain, synovitis of hands bilaterally, obesity, GERD and asthma. Claimant was hospitalized in August 2006 for chest pain (non-cardiac), weakness of left upper extremity and headache.

### **DEPARTMENT'S POSITION**

The department thinks that claimant has normal Residual Functional Capacity. Based on claimant's vocational profile (younger individual)(age 48) with a GED education and a work

history as an administrative aide to an advertising vice president, the department denied claimant's application based on her ability to perform substantial gainful activity.

**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 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 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).

**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 and 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 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.

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.

Unless an impairment is expected to result in death, it must have lasted or be expected to last for a continuous period of at least 12 month. 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, claimant does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT found that claimant does not meet the severity and duration requirements.

Claimant does not meet the Step 2 disability requirements.

**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 a Listing.

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 an administrative assistant for a vice president of advertising for a real estate developer.

Claimant's work as an administrative may be defined as follows:

**Sedentary work.** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

The medical /vocational evidence of record establishes that claimant is able to return to her previous job as an administrative assistant for an advertising executive.

Claimant does not meet the Step 4 disability requirements.

**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 sedentary/light work. This means that claimant is able to work in her previous job as an administrative assistant to an advertising vice president. She is also able to work as a carry-out clerk at a grocery store, as a ticker taker for a theatre, as a parking lot attendant and as a greeter for [REDACTED].

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 the claimant does not meet the MA-P/SDA disability requirements under PEM 260 and 261. Claimant is not disabled for MA-P/SDA purposes based on Steps 3, 4 and 5 of the sequential analysis, as 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 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/sd

cc:

