

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: 2007-16457
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 4, 2007
Alpena 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 October 4, 2007.

The department was represented by Roger Petty (ES).

Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on October 18, 2007. Claimant waived the timeliness requirements so that her new medical evidence could be reviewed by SHRT.

After SHRT's second disability denial, the Administrative Law Judge made the final decision below.

ISSUE

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/SDA applicant (March 6, 2007) who was denied by SHRT (August 3, 2007) due to claimant's ability to perform her past light work.

(2) Claimant's vocational factors are: age--51; education—high school diploma; post-high school education—one half semester at [REDACTED] (Book Keeping); work experience—**currently employed at [REDACTED] as a cashier**, production work at an electric cart factory.

(3) Claimant is currently performing Substantial Gainful Activity (SGA). She currently works approximately 27 ½ hours a week at [REDACTED]. Her approximate monthly gross income is \$800.

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

- (a) Headaches;
- (b) Seizures.

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

OBJECTIVE MEDICAL EVIDENCE (AUGUST 3, 2007):

In 4/2007, her family practice physician indicated temporal lobe seizures with a normal exam (Page 5).

ANALYSIS: The objective medical evidence presented does not establish a disability at the listing or equivalence level. The objective medical evidence shows that claimant is capable of performing a wide range of light work.

* * *

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

(7) Claimant has a valid driver's license. She does not drive because her physician has advised her not to. Claimant is computer literate. Claimant enjoys playing computer games.

(8) The following medical records are persuasive:

(a) An April 11, 2007 clinical examination report (DHS-49) was reviewed.

The physician provided the following diagnosis:

Temporal lobe seizures, increasing in frequency.

The physician provided the following limitations:

Physical limitations—No driving.

Mental limitations—Decreased comprehension, memory and sustained concentration.

(9) The probative medical evidence does not establish an acute physical condition (exertional) expected to prevent her from performing all customary work functions for the required period of time. The medical/vocational records show a history of headaches and seizures.

(10) Claimant's most prominent complaint is headaches and passing-out.

(11) Claimant has applied for federal disability benefits with the Social Security Administration. Her application was recently denied and she has 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 normal Residual Functional Capacity (RFC) to perform light work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department thinks that claimant retains the capacity to perform a wide range of light work. Since claimant's past work was light (cashier) claimant retains the capacity to perform her past relevant work.

SDA was denied based on claimant's failure to establish the required severity and duration 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 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).

Claimant has the burden of proof to show by a preponderance of the medical evidence on the record that her physical (exertional) 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.

Claimant's 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 currently working approximately 27 ½ hours per week for [REDACTED]. She works as a cashier. In that capacity, she earns approximately \$413 every two weeks. This is approximately \$800 a month.

Claimant's current [REDACTED] employment is Substantial Gainful Activity.

Therefore, claimant does not meet the Step 1 disability requirements. Since claimant does not meet the Step 1 disability requirements, no further analysis using the sequential analysis is required. See 20 CFR 416.920.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does not meet MA-P/SDA disability requirements under PEM 260 and 261. Claimant is not disabled for MA-P/SDA purposes based on Step 1 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 Ismael Ahmed, Director
Department of Human Services

Date Signed: August 10, 2009

Date Mailed: August 11, 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

2007-16457/JWS

cc:

