

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: 2007-17698
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 6, 2007
Otsego 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 in Gaylord on December 6, 2007. Claimant personally appeared and testified under oath.

The department was represented by Michelle Hagerman (ES) and Cindy Hoover (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the time limit requirements so that her new medical evidence could be reviewed by SHRT. Claimant did not submit new medicals by the Record Closed Date.

ISSUE

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 (May 9, 2007) who was denied by SHRT (November 6, 2007) due to claimant's ability to perform her past relevant work.

(2) Claimant's vocational factors are: age--58; education—high school diploma; post-high school education—2 years of college where she received a certificate as a medical assistant; work experience—press operator for an auto parts factory; nurse assistant at a long-term care facility. Claimant has advanced training in nursing.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she was a press operator for an auto parts factory in January 2007. Claimant sustained an on-the-job injury in January 2007 and left her position for that reason.

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

- (a) Degenerative disc disease;
- (b) Bulging discs;
- (c) Lower back dysfunction;
- (d) Cervical spine dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (NOVEMBER 6, 2007):

Orthopedic surgeon consult of 4/13/2007 reported claimant to be 60" tall and weigh 145 pounds. Her spine was straight. Her gait was unaided and normal with tip-toe, heel and single leg stance being normal. There was no visible atrophy, fasciculations or discolorations. There were no noted muscle spasm or trigger points. She reported pain on a range of motion of the cervical spine. The thoracolumbar motion was limited. Hip flexion and extension was pain free. Seated straight leg raising was negative. Cervical spine x-ray was reported showing advanced degenerative changes at the C4-C6 levels. Lumbar spine x-ray showed diffuse facet degeneration with loss of disc space (page 21).

CT scan of the pelvis reported degenerative changes at the lower lumbar spine and bilateral hip joints (page 35).

ANALYSIS: The medical information in the file indicates claimant has some degenerative changes in pain and her cervical and lumbar spine as well as her hips. As a result, she should avoid heavy lifting, overhead reaching and constant stooping and crouching. The objective findings would not suggest a very severe impairment.

(6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), cooking, dish washing, light cleaning, laundry (needs help) and grocery shopping. Claimant uses a cane and shower seat; she does not use a walker or a wheelchair.

(7) Claimant has a valid driver's license and drives an automobile approximately 6 times a month. Claimant is computer literate. Claimant has advanced training in nursing.

(8) The following medical records are persuasive:

(a) See the SHRT summary at paragraph #5, above.

(9) The probative medical evidence, standing alone, does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do show the claimant has pain on range of motion of the cervical spine. The thoracolumbar motion was limited. Advance degenerative changes at the C4-6 levels were noted.

(10) Claimant's most prominent complaints are her back and cervical pain, secondary to her spinal dysfunction.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration; her application is currently pending.

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 her past relevant work as a rehab assistant and nursing assistant (light/medium). MA-P was denied because claimant's physical impairments were not severe.

The department denied claimant's SDA application because the nature and severity of claimant's impairments do not preclude light/medium work for at least 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).

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).

If an individual has an impairment(s) which meets the durational requirement and is listed in Appendix 1 or is equal to a listed impairment(s), he or she is found disabled without considering age, education and work experience. 20 CFR 416.920(d).

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 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 result in death, it must have existed or be expected to exist for a continuous period of at least 12 month 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 ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT found that claimant meets the severity and duration requirements.

Claimant meets 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 the Listing.

Therefore, 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 press operator for an auto parts factory.

Claimant's work as a press operator may be defined as follows:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The medical /vocational evidence of record establishes that claimant has a reduced ability to lift. Based on claimant's inability to lift more than 20 pounds, she is unable to return to her previous job as a press operator for an auto parts factory.

Therefore, claimant meets 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. Claimant is able to work as a carry-out clerk at a grocery store, as a ticker taker for a theatre, as a pizza delivery driver, parking lot attendant and as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to her return to work was her back and neck pain, secondary to her spinal dysfunction. Evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

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 combination of impairments. Claimant currently performs numerous activities of daily living, has an active social life and drives an automobile. She is also computer literate. Claimant has advanced training in nursing. This means that claimant is able to perform sedentary/light work (SGA).

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 Step 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 17, 2009

Date Mailed: August 18, 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.

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