

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: 2007-20608
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 8, 2007
Iosco 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 West Branch on November 8, 2007. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Joey Marshall (FIM).

The 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 March 31, 2008. Claimant waived the timeliness requirements so that her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge made the final decision below.

ISSUES

(1) 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)?

(2) 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)?

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 1, 2007) who was denied by SHRT (October 8, 2007) due to claimant's ability to perform light work. SHRT relied on Med-Voc Rule 203.28 as a guide. Claimant requests retro MA for February, March and April 2007.

(2) Claimant's vocational factors are: age--57; education—high school diploma; post-high school education—attained a certificate in book keeping from business school; work experience—dishwasher at a restaurant, bartender and restaurant helper.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since November 2006 when she was injured in a slip-and-fall injury at a restaurant where she was employed as a dishwasher.

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

- (a) Under a lot stress;
- (b) Problems with back;
- (c) Back pain;
- (d) Low back pain (2006);
- (e) Pain in legs (onset 2006);
- (f) Injured at work due to a slip-and-fall injury in November 2006.

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

OBJECTIVE MEDICAL EVIDENCE (OCTOBER 8, 2007):

A 4/2007 neurosurgical consult noted a positive straight leg raise testing bilaterally with no neurological deficits and a normal gait (page 46). An MRI of the lumbar spine showed degenerative changes (page 47). In 5/2007, her family practice physician noted severe osteoporosis at L4 spinal stenosis as diagnoses. Her physical exam was unremarkable. She was 5' tall and weighed 111 pounds (pages 49-50).

ANALYSIS

The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective 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 (sometimes), laundry and grocery shopping (needs help).

- (7) Claimant does not have a valid driver's license. Claimant uses the computer to play video games.

- (8) The following medical records are persuasive:

- (a) A May 24, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: Severe osteoporosis, arthritis of the thoracic and lumbar-sacral spine; spinal stenosis (L4-5) and disc bulge (L4-5).

The physician reported the following physical limitations:

Able to lift less than 10 pounds frequently, able to lift up to 20 pounds occasionally, able to stand/walk less than 2 hours in an 8 hour day, able to sit less than 6 hours in an 8 hour day.

Claimant has normal use of her hands/arms and normal use of her feet/legs. The physician reported no mental limitations.

(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 clinical evidence in the record that claimant has been evaluated by a psychiatrist or a PhD psychologist. Claimant did not submit a DHS-49D or a DHS-49E for consideration.

(10) The probative 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 medical records do show the following diagnoses: Severe osteoporosis, arthritis of the spine, spinal stenosis, and disc bulge.

(11) Claimant's chief complaint is low back pain.

(12) Claimant applied for federal disability benefits with the Social Security Administration. Her claim was recently denied. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant believes she is entitled to MA-P/SDA benefits based on the impairments listed in paragraph 4 above. Claimant thinks she is entitled to benefits based on Med-Voc Rule 202.45. Claimant notes that SHRT used the incorrect age (47) in its October 8, 2007 State Hearing Review Team decision.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a wide range of unskilled, light work. The department originally denied claimant's application based on Med-Voc Rule 202.20. Upon a second review, the department denied disability.

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 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.

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 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 lasted or be expected to last 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 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 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 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 a dishwasher at a restaurant.

Claimant's work as a dishwasher 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 may occasionally lift a maximum of 20 pounds.

Since claimant has a 20 pound lifting restriction, and her previous work was medium work, she is not able to return to her previous work as a dishwasher.

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 evidence of record, taken as a whole, establishes that claimant is able to perform sedentary/light work. Based on this assessment, claimant is 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].

During the hearing, claimant testified that a major impediment to her return to work was her back and leg 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 back pain secondary to her spinal dysfunction. Claimant currently performs numerous activities of daily living, has an active social life and plays computer games on her computer. The medical record, taken as a whole, shows that claimant is able to perform sedentary/light work.

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 described above.

Accordingly, the department's denial of claimant's MA-P/SDA is, hereby, AFFIRMED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 5, 2009

Date Mailed: October 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 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:

