

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: 2007-22981
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 13, 2007
Clare 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 Harrison on December 13, 2007. Claimant personally appeared and testified under oath.

The department was represented by Scott Smith (FIM) and Julie Allison (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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

ISSUE

(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)?

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 29, 2007) who was denied by SHRT (November 8, 2007) due to claimant's ability to perform her past relevant light work.

(2) Claimant's vocational factors are: age--44; education—high school; post-high school education—none; work experience—deli clerk, retail sales clerk.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since January 2000, when she was a deli clerk. Claimant sustained a back injury at work in January 2000.

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

- (a) Severe osteoarthritis;
- (b) Bone spurs;
- (c) Scoliosis;
- (d) Bursitis;
- (e) Muriatic acid dysfunction;
- (f) TMJ;
- (g) Hypoglycemia;
- (h) Muscle spasms.

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

OBJECTIVE MEDICAL EVIDENCE (NOVEMBER 8, 2007):

Consultative examination of 6/8/2007 indicated claimant was 64" tall and weighed 285 pounds. She had no difficulty getting on or off the table. She had moderate difficulty with heel/toe walking and squatting. There was significant spasm noted in the low back and left buttock. She was very tender along the left lateral thigh. Range of motion was within normal limits. Reflexes, motor, and sensory exams were within normal limits (page 152).

An MRI of the lumbar spine demonstrated moderate bilateral facet hypertrophic changes (L4-S1) (page 121).

ANALYSIS:

The combined effect of claimant's conditions (including obesity) would make it difficult for her to perform heavy lifting, frequent stooping and crouching. She should be capable of performing light work in which she can alternate sitting and standing as afforded by normal breaks and lunch.

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

(7) Claimant has a valid driver's license and drives an automobile approximately 3 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A July 2, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnosis:

Back pain, GERD, asthma, allergic rhinitis, frequent sinusitis, hypothyroid dysfunction and obesity.

The physician provided the following work limitations:

Claimant is able to lift less than 10 pounds frequently and 10 pounds occasionally. She is able to stand/or walk less than 2 hours in an 8 hour day. She is able to sit about 6 hours in an 8 hour day. Claimant is able to use both hands and arms normally. However, not able to use her feet/legs.

- (b) A [REDACTED] [REDACTED] narrative examination report was reviewed.

Chief complaints: Back injury, bone spurs, arthritis and pinched nerves.

The patient states that in 1999 she was working in a deli. She twisted her back and initially was diagnosed with muscular strain. She underwent follow-up evaluation which revealed degenerative disc disease by radiographs and bone spurring. She has continued to have pain since that time and seems to be exacerbating and worsening with time. She has pain at her left hip radiating down from her left hip down the lateral thigh and into the knee. Her symptoms are exacerbated with prolonged sitting or worse with activities. She has been using a cane over the last year in response to this which helps her with her balance and support of the leg. She is using daily pain medications including Duragesic, Darvocet and Tylenol. She has undergone physical therapy and a trial of epidural injections without symptomatic relief. She is following with a chiropractor, neurosurgeon and neurologist as well as her family physician. She has seen multiple specialists over the last several years relating to this worsening back pain. She also relates that she has intermittent muscle spasms and spasm-style pain, which are completely incapacitating. The pain is so severe that she will shake. During the evaluation she had 3 such episodes which were quite atypical in nature. They were characterized by a diffuse spine tremor and shake throughout her entire body. Her face became excessively flushed and she appeared very uncomfortable during these episodes. They lasted for about 5 or 10 seconds. She was coached by her son to "relax" that this seemed to help resolve the episode.

Patient states that she last worked in January 2000 where she was working at the deli. She lives with her husband and son, age 21, who accompanied her to the appointment today. For leisure, she enjoys reading, doing crafts and listening to music. She does cook and cleans with help and will occasionally drive. She can sit for about 10-15 minutes, can stand for about 5-10 minutes and can walk for about 5-10 minutes. She can lift 10 pounds based on a lifting restriction provided by one of her physicians.

CONCLUSION:

(1) Lower back pain:

She relates her symptoms began in November 1999 after a twisting style injury at work. She appears to have a significant myofacial component to her pain and likely has secondary facet arthropathy related to her period. There is no evidence clinically of radicular disease, however, her history is somewhat leading to this. She is using Duragesic, Davocet and Tylenol. She is using a cane for stability.

(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There are no psychiatric or psychological reports in the record. Claimant did not submit a DHS-49D or DHS-49E.

(10) The probative medical evidence does not establish an acute (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show the following exertional impairments: Back pain, GERD, asthma, allergic rhinitis, frequent sinusitis, hypothyroid and obesity. The consulting physician did not state that claimant was unable to work.

(11) Claimant has applied for federal disability benefits with the Social Security Administration. Social Security recently denied her application; claimant 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 the Residual Functional Capacity (RFC) to perform light unskilled work. The department thinks that the combined effects of claimant's conditions (including obesity) would make it difficult for her to perform heavy lifting, frequent stooping and crouching. She should be capable of performing light work in which she can alternate sitting and standing as afforded by normal breaks and lunch.

The department denied MA-P/SDA based on claimant's capacity to perform past relevant work.

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 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.

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.

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 ability to do basic work activities, she does not meet the Step 2 disability criteria.

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

Therefore, 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.

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 deli clerk. Claimant's work was light work as defined as follows:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The medical evidence does not establish that claimant is unable to perform light work.

Therefore, 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.

Claimant has the burden of proof to show by the medical evidence in the record that her physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges that she is unable to work due to chronic back pain. A careful review of the medical record does not establish that claimant's back pain and spasms totally prevent all work activity.

During the hearing, claimant testified that the major impediment to her return to work was her back pain and spasms, 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. Also, claimant did not establish a severe mental or physical impairment.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her back pain, spasms and spinal dysfunction. Claimant currently performs several activities of daily living, has an active social life, and drives an automobile approximately 3 times a month. This means that claimant is able to perform light/sedentary work (SGA). Claimant is able to work as a ticker taker for a theatre, as a pizza delivery driver, 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 260/261. 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 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.

JWS/sd

cc:

