

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: 2007-30582
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 5, 2008
Livingston 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 Howell on February 5, 2008. Claimant personally appeared and testified under oath.

The department was represented by Janet Shuster (Resource Coordinator).

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 August 8, 2009. Claimant waived the time limit 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 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 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 (August 28, 2007) who was denied by SHRT (December 28, 2007 and September 3, 2009) due to claimant's failure to submit sufficient medical evidence to establish an impairment which meets the department's severity and duration requirements. SHRT requested a complete independent consultative physical examination in narrative form to clarify claimant's medical status. Claimant requests retro MA for May, June and July 2007.

(2) Claimant's vocational factors are: age--51; education--high school diploma, post-high school education--one semester at a community college and three semesters at [REDACTED]; work experience--machine operator and customer service representative at [REDACTED], graphic designer, administrative assistant/customer service representative, and owned and operated her own print screen company for 5 years.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) working as a copy machine operator and customer service representative at [REDACTED]. She works approximately 20 hours a week and her hourly wage is \$8.75. Her pay checks average \$221 per week.

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

- (a) Arthritis;
- (b) Hepatitis C;
- (c) Diabetes;
- (d) Asthma
- (e) Vasovagal disease of the brain;
- (f) Low blood pressure;

- (g) Retinopathy of the left eye;
- (h) Neuropathy;
- (i) Weak grip;
- (j) Weak hands;
- (k) Status-post stroke;
- (l) Neuralgia (paralysis) in the tongue;
- (m) Fibromyalgia with pain;
- (n) Liver disease.

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

OBJECTIVE MEDICAL EVIDENCE (December 28, 2007)

The medical evidence of record reported claimant with significant limitations in the use of the hands in 3/2007 and no significant restrictions noted at the 6/2007 exam. Information is conflicting.

ANALYSIS: Additional medical information is needed for current functioning capacity.

* * *

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

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

- (8) The following medical records are persuasive:

- (a) A July 19, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses: chronic pain; limited range of motion; diabetes mellitus, Type 2; sleep apnea; fibromyalgia; neuropathy; hepatitis C; and neurocardiogenic syncope.

The physician reports the following limitations:

Claimant can lift up to 10 pounds occasionally. She can stand/walk less than 2 hours in an 8-hour day. She occasionally uses a cane. She is not able to do any functions with her hands/arms. She is able to operate foot/leg controls with both legs.

The physician reports no mental limitations. However, she reports mild impairments on comprehension, memory, sustained concentration and following instructions.

* * *

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

(10) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The DHS-49 shows the following exertional impairments: chronic pain, limited range of motion, diabetes mellitus Type 2, sleep apnea, fibromyalgia, neuropathy, hepatitis C, and neurocardiogenic syncope.

(11) Claimant's Social Security status is unknown.

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's medical evidence is insufficient to arrive at a conclusion as to her Residual Functional Capacity (RFC).

The SHRT requested an additional consultative physical examination.

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 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 currently performing SGA. She currently works about 20 hours per week as a customer service representative and machine operator at a [REDACTED] copy center.

Therefore, claimant does not meet the Step 1 eligibility test.

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 months. 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/mental 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 test because her medical evidence is insufficient.

Therefore, claimant does not meet the Step 2 eligibility test.

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 Listings.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant is currently employed by [REDACTED] as a copy center worker and as a customer service representative. Claimant's work as a customer service representative for [REDACTED] is light work, which may be 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/vocational evidence of record shows that claimant is currently employed at [REDACTED] for approximately 20 hours per week in a customer service and a machine operator capacity.

Therefore, claimant does not meet the Step 4 eligibility test.

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 of record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges disability based on fibromyalgia/pain plus neuropathy and a diminished ability to use her hands for normal functioning (grasping, etc.).

A careful review of claimant's exertional medical evidence shows that claimant does have neuropathy. However, the fact that claimant is now employed part-time at 20 hours per week at [REDACTED] indicates that she is able to perform at least sedentary work.

During the hearing, claimant testified that the major impediment to her return to work was her overall body pain (fibromyalgia), coupled with neuropathy and the diminished ability to use her hands for normal functioning. 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 neuralgia and diminished ability to use her hands. Claimant currently is employed part-time at [REDACTED] running copy machines and waiting on customers. In addition, claimant performs many Activities of Daily Living, has an active social life, and drives an automobile approximately four times a month. This means that claimant is able to perform light/sedentary work (SGA). The medical/vocational evidence shows that claimant is able to work as a carry-out clerk in a grocery store, as a ticket taker for a theatre, as a pizza delivery

driver, as a parking lot attendant, as a greeter for [REDACTED], and as a customer service representative for [REDACTED].

Claimant does not meet the Step 5 eligibility test.

Based on this analysis, the department correctly denied claimant's MA-P/SDA disability application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that 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 1, 2, 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: 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.

2007-30582/JWS

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

cc:

