

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: 2007-03474
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 10, 2007
Kalamazoo 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, an in-person hearing was held on May 10, 2007 in Kalamazoo. Claimant personally appeared and testified under oath.

Claimant was represented by [REDACTED].

The department was represented by Gay Double (ES).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. Claimant did not submit new medicals prior to record close date, as required.

ISSUE

Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work on a sustained basis for one year (MA-P)?

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 applicant (July 28, 2006) who was denied by SHRT (February 1, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for April, May, and June 2006.

(2) Claimant's vocational factors are: age--64; education--high school diploma; post-high school education--2 years at southern college where she studied nursing; claimant is a certified nurse assistant; work experience--worked as a certified nurse assistant, worked as membership coordinator for the [REDACTED] (20 years)(semi-skilled).

(3) Claimant has not performing Substantial Gainful Activity (SGA) since March 2006, when she was employed as a certified nurse assistant.

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

- (a) Defective heart;
- (b) Needs heart valve surgery;
- (c) Does not have her usual endurance; must rest between activities.

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

OBJECTIVE MEDICAL EVIDENCE (February 1, 2007):

In 9/2006, claimant was hospitalized due to rectal bleeding/abdominal pain. A colonoscopy revealed possible ischemic colitis versus e coli infection. (Pages 16-18) She also was treated for acute renal insufficiency secondary to pyelonephritis, which improved during the course of her hospitalization. She was not on dialysis, and her labs were not significantly impaired. (Page 23, 49-90)

ANALYSIS: Her condition is expected to improve.

* * *

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

(7) Claimant has a valid driver's license and drives her automobile approximately 8 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A May 12, 2005 cardiology assessment was reviewed.

The physician provided the following patient profile: This is a 62-year-old female who returns to follow-up today after a recent TEE. She states that overall she has been doing very well. She has had no dyspnea. No shortness of breath. She has had no orthopnea or PNB. She has had no palpitations, loss of consciousness or syncope.

The cardiologist provided the following assessment: mild-to-moderate mitral regurgitation on recent transesophageal echocardiography; preserved left ventricular systolic function with an ejection fraction of 60%; hypertension which is well controlled; hypothyroidism; hyperlipidemia.

(b) A September 14, 2006 discharge summary was reviewed.

The physician described the following hospital course: Patient presented to [REDACTED] on 9/11/2006, with blood in her stools and abdominal pain. She was diagnosed of having ischemic colitis and she made a good recovery. She had a colonoscopy done by [REDACTED] and the biopsy did not reveal any evidence of malignancy. It confirmed the findings of ischemic colitis. The hemoglobin dropped from 13.6 to 12.1, but this has been stable since and her TSH was elevated at 97.65. We discussed with the patient about stopping estrogen supplements as this could increase the risk of thromboembolic events and she is reluctant to do this as this causes mood swings but she agreed to drop the dose of Estropipape from 3 mg. a day to 1.5 mg. a day.

(c) An April 18, 2006 [REDACTED] clinical resume was reviewed.

The physician provided the following primary diagnosis:

- (a) Right-sided pyelonephritis, with sepsis and Escherichia coli bacteruria; leukocytosis; acute renal failure secondary to acute tubular necrosis; bilateral plural effusions; hypertension; mitral regurgitation; hypotension and shock; hypothyroidism; hyperlipidemia; constipation; and generalized weakness.

(9) 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 examining physician provided the following diagnoses: hypertension, acute renal insufficiency, hypothyroidism and mitral valve dysfunction. There are no work limitations in the medical reports of record.

(10) The medical records, taken as a whole, do not establish a severe physical impairment that would totally preclude Substantial Gainful Activity.

(11) Claimant's most prominent complaint is shortness of breath and lack of endurance to perform daily activities.

(12) Claimant has applied for Social Security benefits. Recently, the Social Security Administration denied claimant's application. Claimant recently filed a reapplication.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] in the hearing request:

I am filing this hearing request on behalf of claimant to appeal the 8/14/2006 denial of her 7/28/2006 application with retroactive coverage to April of 2006. The claimant was hospitalized in April of 2006 for acute renal failure with sepsis due to pyelonephritis. Claimant was also treated for hypertension, mitral regurgitation and hypothyroidism. Claimant was readmitted in September of 2006 for GI bleeding due to ischemic colitis.

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC). The department thinks that the current medical evidence does not clinically document any severely restrictive impairments.

The department thinks that the medical evidence shows that claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. The department denied MA-P eligibility due to lack of severity and duration under 20 CFR 416.909.

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).

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 physical impairments meet the department's definition of disability for MA-P purposes. PEM 260. "Disability," as defined by MA-P 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.

SGA is defined as the performance of significant duties over a reasonable period of time for pay, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The 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.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means the severe impairment is expected to last for 12 continuous months or result in death. SHRT found that claimant does meet the severity and duration requirements based on the medical records.

The Administrative Law Judge agrees.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that she meets any of the Listings.

Therefore, the Administrative Law Judge concludes that 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 certified nurse's aide providing chore care services. The medical evidence of record establishes that claimant is not able to perform her previous work as a certified nurse's aide because that work involved heavy lifting and constant attention to her client's needs for an 8-hour shift. Currently, claimant is experiencing a lack of endurance and, therefore, would be unable to perform an 8-hour shift doing heavy work as a certified nurse's aide.

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].

The vocational evidence of record establishes that claimant is able to perform sedentary/light work. Claimant's vocational profile shows an individual approaching advanced age with a high school education and a history of semi-skilled work as a membership assistant for the [REDACTED]. Claimant most recently worked as a certified nurse's aide doing heavy work.

While the medical record shows that claimant is not able to return to her most recent work as a certified nurse's aide, claimant would be able to return to light/sedentary work which includes working as a security guard, bank teller, ticket taking for a theatre or as a packing lot attendant.

During the hearing, claimant testified that the major impediment to her return to work was her lack of endurance and stamina. Lack of endurance and stamina, alone, is insufficient to establish disability for MA-P.

The Administrative Law Judge concludes that claimant's testimony about her lack of endurance and stamina is credible, but out of proportion to the objective medical evidence as it relates to claimant's ability to work.

After a careful review of the entire medical record, the Administrative Law Judge concludes that claimant is not totally unable to work based on her combination of impairments, with emphasis on her lack of stamina and endurance. It is noted that claimant currently performs a significant number of Activities of Daily Living and is able to care for herself. She drives an automobile and has an active social life. This would suggest that claimant has the residual functional capacity to perform sedentary/light work.

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 disability requirements under PEM 260.

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

SO ORDERED.

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

Date Signed: July 27, 2009

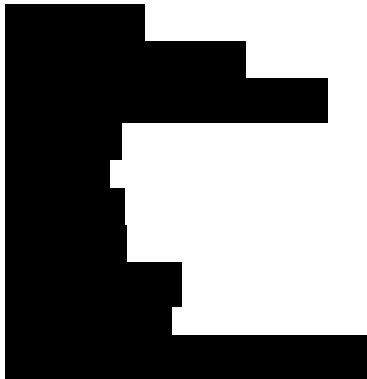
Date Mailed: July 27, 2009

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 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

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