

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: 2007-05690
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 Al Schweidzer (ES).

Claimant requested additional time to submit new medical evidence. The new medical evidence was received and submitted to the State Hearing Review Team on June 8, 2007. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the ALJ issued the Decision below.

ISSUES

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

(2) 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 (August 30, 2006) who was denied by SHRT (March 12, 2007) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for May, June, and July 2006.

(2) Claimant's vocational factors are: age--56; education--high school diploma; post-high school education--attended classes at the [REDACTED] for one year (did not receive her certificate); work experience--employed as a housekeeper by [REDACTED] (8 years), worked as a seasonal greenhouse worker and as a house cleaner for [REDACTED] (unskilled).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2001, when she was employed as a housekeeper for [REDACTED].

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

- (a) Unable to lift large amounts;
- (b) Unable to push heavy objects;
- (c) Afraid of being in the public;
- (d) Mostly stays at home;
- (e) Asthma;
- (f) Shortness of breath;
- (g) COPD.
- (h) Generalized anxiety disorder.

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

OBJECTIVE MEDICAL EVIDENCE (March 12, 2007):

In 5/2006, she presented to the ER complaining of chest pain. Her physical examination was entirely within normal limits. A Cardiolite stress test was normal. (Pages 26, 30) In 9/2006, she presented to the ER complaining of right knee pain. The physical exam was normal. Her lungs were clear. An ultrasound was negative for DDT. Her blood pressure was normal at 128/70. Her gait was normal. No neurological deficits were noted. (Pages 11-14) In 11/2006, her family practice physician noted a diagnosis of hypertension, COPD, anxiety and chronic low back pain. On exam, she weighed 143 pounds and her blood pressure was 145/88. She had some tenderness along her lumbar spine with no neurological deficits. Her gait was not abnormal. She was anxious. (Page 9-10).

ANALYSIS: There was no evidence of a disabling physical or mental impairment that would preclude basic work activity.

* * *

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

(7) Claimant does not have a valid driver's license. She is computer literate.

(8) The following medical records are persuasive:

- (a) A November 30, 2006 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: generalized anxiety disorder; COPD; hypothyroidism, low back pain, anxiety.

The physician reported that claimant is able to lift up to 10 pounds frequently. She is able to stand and/or walk less than 2 hours in an 8-hour day and able to sit about 6 hours in an 8-hour day. She is able to use her hands and arms for simple grasping and fine manipulating but not able to use her hands/arms for reaching or pushing or pulling. Claimant is unable to operate foot controls. The physician notes the following findings: chronic low back pain, worse when reaching, twisting, and bending.

* * *

(9) The probative medical evidence, standing alone, does not establish an acute mental condition, which by itself, is expected to prevent claimant from performing customary work functions for the required period of time. There are no psychiatry or psychological reports in the record to substantiate any form of mental illness.

(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 examining physician provided the following diagnosis: hypertension, COPD, anxiety, and chronic low back pain. The physician reported that claimant is unable to lift more than 10 pounds occasionally, unable to stand and/or walk more than 2 hours out of an 8-hour day, and unable to sit more than 6 hours in an 8-hour day. She is able to use her hands/arms for simple grasping and fine manipulating, but not for reaching or pushing-pulling. Claimant is unable to operate foot controls. The internist's report, when taken in conjunction with the entire medical record does not establish a severe physical impairment that would totally preclude Substantial Gainful Activity.

(11) Claimant's most prominent complaint is her anxiety and her lack of endurance and stamina.

(12) Claimant recently applied for Social Security benefits. The Social Security Administration denied claimant's application. She has filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] in the hearing summary which was filed on claimant's behalf:

I am filing this hearing request on behalf of claimant to appeal the 9/19/2006 denial of her 8/30/2006 application with retro coverage to May of 2006. Claimant was hospitalized in May of 2006 for chest pain, she was also treated for hypertension, anxiety and depression. Claimant additionally suffers from arthritis in her hands and knees.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC). The department thinks that there is no evidence of a disabling physical or mental impairment that precludes basic work activity. The department denied claimant's application based on claimant's failure to establish an impairment that significantly limits claimant's ability to perform basic work activities. The department denied claimant's MA-P application based on 20 CFR 416.921(a) due to claimant's failure to meet the severity and duration requirements.

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 mental/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 not meet the severity and duration requirements based on her medical reports.

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 housekeeper at the [REDACTED]. This work was light to medium work. The medical evidence of record establishes that claimant is able to perform sedentary/light work, but not able to perform work which requires that she stand on her feet continuously for an 8-hour shift. Since claimant is unable to stand for the required 8 hours, she is not able to return to her previous work.

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] *titles*, published by the [REDACTED] at 20 CFR 416.967.

The vocational evidence of record establishes the claimant is able to perform sedentary/light work. Claimant's vocational profile shows an individual approaching advanced age (age 56) with a high school education and a history of unskilled work as a housekeeper at the [REDACTED]. The vocational evidence of record, when taken as a whole, shows that claimant is able to perform Substantial Gainful Activity. The medical record substantiates the conclusion that claimant is able to work as a security guard, bank teller, ticket taker 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 in addition to the pain claimant experiences in her hands and knees due to her arthritis. Evidence of pain, alone, is insufficient to establish disability for MA-P 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 arthritis and her lack of stamina. The Administrative Law Judge thinks that it is significant that claimant currently performs many activities of living as well as daily self care activities. Claimant is computer literate and has an active social life. Taken as a whole, the medical record shows that claimant is currently able to perform Substantial Gainful Activity.

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

cc:

