

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: 2007-06498
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 12, 2007
Genesee 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 July 12, 2007 in Flint. Claimant personally appeared and testified under oath by telephone from [REDACTED]. Claimant was represented by [REDACTED] from [REDACTED]. The department was represented by Karen Flowers (FIS).

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.

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) 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 (June 22, 2006) who was denied by SHRT (March 14, 2007) due to claimant's ability to perform a wide range of light work. Claimant requests retro MA for March, April, and May 2006.

(2) Claimant's vocational factors are: age—54; education—high school diploma; post high school education—none; work experience—cashier and stocking clerk for [REDACTED] stores, stocker for [REDACTED], and bank teller.

(3) Claimant has not performed substantial gainful activity (SGA) since May 2006 when she worked as a cashier and merchandise stocker for [REDACTED].

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

- (a) back dysfunction;
- (b) unable to lift any amount;
- (c) unable to sit, stand, or lie down;
- (d) back pain.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 14, 2007)

Claimant's treating physician reported 6/2006 that the status of claimant's conditions were stable and she had no mental limitations. On exam 6/2006, there were mild limitations in the range of motion of the lumbar spine and tenderness over the paraspinal area. The treating physician assessed that claimant retained the capacity to lift and carry no more than 50 pounds with full use of the hands and arms for repetitive action and no reported problems with lower extremity use.

On physical exam 8/2006, range of motion of the lumbar spine was slightly decreased. Gaits and heel and toe walk were done normally. Squat was full to standing. Straight leg raise was negative bilaterally. Range of motion of the hips and ankles was

normal. Motor strength, sensation, and reflexes were present and equal bilaterally. A lumbar spine MRI showed arthritis but no herniated discs.

ANALYSIS: The status of claimant's impairments is stable. Claimant reports back, neck, and hip pain. However, she walks and moves about and has full use of her upper extremities. No severe nerve or muscle damage was documented. No physical or mental impairments were clinically documented. It is assessed that claimant retains the physical residual functional capacity to perform light work.

(6) Claimant performs the following activities of daily living (ADLs): dressing and bathing. Claimant lives with her daughter and relies on her for almost all of her activities of daily living.

(7) Claimant has a valid driver's license but does not drive. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) An August 21, 2006 medical rehabilitation narrative examination was reviewed. The physician provided the following history: Claimant states that she has a history of chronic low back pain since 1995. Since that time, she suffered from a work-related injury and her symptoms have become progressively worse. Most recent diagnostic testing including EMG of both lower extremities on August 11, 2006 revealed bilateral L5-S1 radiculopathy. MRI of the lumbar spine of October 13, 2001 did not reveal any evidence of disc herniation but did report facet arthritis. Treatment has included oral medication. The last formal physical therapy was in 1999. She did not have any lumbar epidural injections.

CURRENT COMPLAINTS: Claimant currently complains of constant central low back pain intermittently radiating down both legs and feet with numbness and tingling and with sitting. She denies any bowel or bladder dysfunction. It is worse with sitting, walking, standing, and bending. She cannot recall anything which improves her condition.

The physician provided the following impression: Claimant is a 53-year-old right-handed woman with a history of chronic low back pain. On examination today, she has absent muscle stretch reflexes of both patellae and Achilles. She has some limitations in the active range of motion of her trunk, and forward flexion as well as back extension. Otherwise, I do not observe any other evidence of orthopedic or neurological impairment.

The physician did not report any specific work limitations.

- (b) A [REDACTED] Medical Examination Report (DHS-49) was reviewed. The primary care physician reports the following diagnoses: (1) chronic back pain; (2) hypertension; (3) recurrent UTI (urinary tract infection). The physician reports that claimant cannot lift 50 pounds. He does not report any limits to her ability to stand, walk, and sit. He does not report any limits on her ability to operate foot/leg controls. He does report that claimant can use her hands and arms normally. He reports that claimant has limited range of motion of her lumbosacral joints.
- (c) A [REDACTED] Medical Needs form (DHS-54A) was reviewed. The physician states that claimant needs medical assistance with mobility, shopping, laundry, and housework. However he states that claimant is able to work at her usual occupation. He further states that she is not able to work at any job. The primary care physician reports that claimant is not able to lift weights over 10 pounds.

(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:

chronic low back pain, hypertension, and recurrent urinary tract infections. The physician further reported that claimant is not able to lift more than 10 pounds. However, he reports that she is able to use her feet, legs, hands, and arms normally. Also, he does not report any limitations in claimant's ability to sit, stand, or walk. The primary care physician'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.

(10) Claimant's most prominent complaint is low back pain and the inability to do normal activities of daily living.

(11) Claimant has applied for federal disability benefits; her application was recently denied by the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by her representative in the request for hearing as follows:

Claimant is a 53-year-old female who has a 12th grade education and a work history of cashier and retail clerk. She has the following health issues: chronic neck and back pain from disc herniation and it has caused radiculopathy, suffers from functional difficulties due to shoulder, neck, back, and hip problems.

DEPARTMENT'S POSITION

The department denied claimant's MA-P/SDA application because the medical evidence shows the claimant is able to perform light work.

Further more, the department thinks that claimant's impairments are stable. Although claimant reports back, neck, and hip pain, she walks and moves about and has full use of her upper extremities. The department notes no severe nerve or muscle damage in the medical records.

The department thinks that claimant is able to perform her past light work as bank teller. The department denied claimant's MA-P/SDA application because claimant is able to perform light work and this precludes a finding of disability at this time.

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 physical impairments meet the department's definition of disability for MA-P and SDA purposes. PEM 260 and 261. "Disability," as defined by MA-P/SDA standards is a legal term which is individually determined by 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 meets the severity and duration requirements. 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 bank teller and as a stocker for [REDACTED]. This was light work. The medical evidence of record establishes that claimant is able to perform light work. Although claimant's physician states that she is unable to lift 50 pounds, he does not list any other significant functional limitations that would preclude claimant from returning to her previous work at [REDACTED]. Claimant is able to sit, stand, and walk normally in an eight-hour day. Claimant can use both her hands and arms as well as her legs and feet normally. Based on the medical evidence of record, claimant is able to perform her previous work as a stocker for [REDACTED] and as a bank teller.

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] at 20 CFR 416.967.

The vocational evidence of record establishes that claimant is able to perform light/sedentary work. Claimant's vocational profile shows an individual approaching advanced age (54), with a high school education, and a history of semi-skilled work as a bank teller and work as a stocking clerk for [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 her previous job as a bank teller. She is also able to work as a security guard, ticket taker for a theater, parking lot attendant, or as a greeter for [REDACTED].

During the hearing, claimant testified that the major impediment to her return to work was her low back dysfunction in combination with her pain. Evidence of pain, alone, is insufficient to establish disability.

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 spinal dysfunction in combination with her pain.

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 eligible for MA-P/SDA at this time based on the sequential analysis at Steps 3, 4, and 5.

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: July 30, 2009

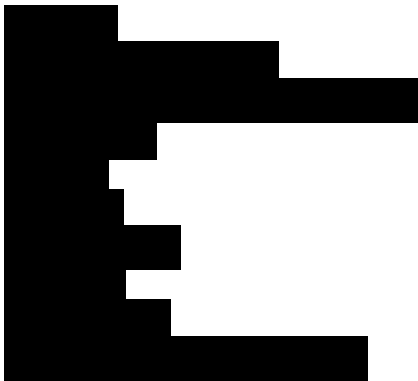
Date Mailed: July 30, 2009

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/pj

cc:

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