

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: 2007-09540
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 24, 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 24, 2007 in Flint. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED]. The department was represented by Daveonda Stevenson (ES).

The Administrative Law Judge issued an Interim Order to obtain new medical requested by the State Hearing Review Team (SHRT).

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 medical evidence prior to record close date.

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 (June 6, 2006) who was denied by SHRT (May 30, 2007) due to insufficient evidence. Claimant requests retro MA for March, April and May, 2006.

(2) Claimant's vocational factors are: Age -- 54; education -- seventh grade; post high-school education -- attended a vocational handicapped work program at [REDACTED] and received a certificate; work experience -- worked at the [REDACTED].

(3) Claimant has not worked since 1997 when she worked at the [REDACTED]. Since this was a sheltered workshop, the Administrative Law Judge is unable to determine, based on the lack of evidence about claimant's duties, whether or not she was performing substantial gainful activity (SGA) at [REDACTED].

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

- (a) Sugar problems (diabetes);
- (b) Metal in spine (possible orthopedic surgery);
- (c) Status post two strokes;
- (d) Heart dysfunction;
- (e) Hypertension;
- (f) Sleep apnea; and
- (g) Short-term memory problems.

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

OBJECTIVE MEDICAL EVIDENCE (May 30, 2007)

In 5/2006, claimant was hospitalized for a possible stroke. Testing showed she had a possible transient ischemic attack (TIA). In 5/2006, her internist noted a possible stroke with a history of diabetes and seizures (pp. 15-16).

ANALYSIS: There is no current physical information in the file.

* * *

(6) Claimant performs the following activities of daily living (ADL's): dressing, bathing, cooking (sometimes), dishwashing, light cleaning, mopping (sometimes), vacuuming (sometimes), laundry (sometimes), and grocery shopping (needs help). Claimant lives with her daughter.

(7) Claimant does not have a valid driver's license and does not drive. Claimant is not computer literate. Claimant attends church regularly and loves to sing.

- (8) The following medical records are persuasive:

(a) An August 11, 2006 psychological narrative was reviewed. The Ph.D. psychologist provided the following history:

Claimant arrived 10 minutes early for her appointment. She had been transported by her daughter, but was unaccompanied into the office. She presented as an average-sized, 53-year-old black adult female, who was attired in a floral-print dress and sandals. She wore her hair pulled back in a ponytail and had eyeglasses. Hygiene and grooming were good. Gross motor functioning was intact, although claimant complained of some recurring right-side weakness from a stroke that she suffered two months ago. No overt physical discomfort was present. Her sexual orientation was impaired (see sensorium and mental capacity results). Speech was readily understandable with no impediment, but claimant was a very poor historian with significant memory deficits.

Demonstrated affect was within normal limits, but claimant complained of feeling moody and depressed regarding her physical condition. She was easily flustered and concerned about not doing well on the sensorium and mental capacity sections of the

evaluation. She related in a cooperative fashion with no oppositional or limit testing, but was somewhat childlike with some general immaturity. Overall evaluation results are considered a reasonably accurate reflection of current functioning.

* * *

Claimant was seriously injured in a car accident in the seventh grade and had home tutoring for several years before finally receiving her diploma with the rest of her class. She recalled having taken some remedial classes, but no actual special education programming. She is taking classes currently through a tutor at church. Claimant's only job experience was working for a couple of months part time at [REDACTED]. She was reportedly never able to hold other jobs due to her physical condition and literacy deficits.

Claimant's 14-year marriage ended in divorce five years ago. She has two daughters (ages 35 and 36) and currently lives with her youngest daughter with whom she has resided for the past five or six months. Her daughter handles the cooking and most of the household responsibilities, although claimant helps when she feels that she can. She may fold and put away clothes, make her bed and dust. Her daughter handles outdoor chores as well as the shopping. Claimant reportedly likes to go to church and volunteers at the food bank. She may go to a movie once a week and used to enjoy visiting her mother and talking to other seniors before her mother died three years ago. She reportedly sees friends daily or every other day and gets along "pretty good" with other people in general, denying significant conflict or any history of physical confrontation. She claimed not to know how to read and reported that her daughter helps her with her mail and bills. Claimant has driven within the past year, but not over the past several months due to grand mal seizures which began after her car accident in the seventh grade and have recurred subsequent to her stroke several months ago.

Claimant described her appetite as poor and stated that her weight has been up and down. She reportedly lost 13 pounds when she was in the hospital, but gained three pounds back as of last week. She has trouble sleeping due to physical discomfort and may average only one-two hours of sleep per night. She described her general mood as sometimes moody and depressed as "there's only something wrong with me." She denied any history of suicidal feelings or psychiatric hospitalization. She denied any history of outpatient psychiatric treatment.

The Ph.D. psychologist provided the following impression:

Axis I -- reactive depression secondary to medical problems; cognitive and literacy deficits....Axis V -- GAF 45.

Recommendation: It is recommended that claimant become involved in outpatient psychiatric treatment designed to reduce current levels of depression and stabilize daily functioning. Recent medical problems appear to have further compromised and limited cognitive and literacy skills and to have further impaired claimant's capacity for gainful employment. She may be a candidate for post-stroke therapy involving cognitive retraining.

(b) A May 24, 2006 Medical Examination Report (FIA-49) was reviewed. The physician provided the following diagnoses:

Possible stroke with history of diabetes and seizures.

The physician states that claimant can lift up to 20 pounds occasionally. She can stand/walk less than two hours in an eight-hour day. She is able to use her hands/arms and feet/legs normally.

(c) A June 1, 2007 Medical Examination Report (FIA-49) was reviewed. The physician provided the following diagnoses:

Capsulitis of the right shoulder nivdm, hypertension, and seizure disorder.

The physician provided the following limitations: Claimant is able to lift less than 10 pounds occasionally. Claimant is able to stand/walk about six hours in an eight-hour day. Claimant is able to use her hands/arms for simple grasping. She is able to use her feet/legs normally.

(9) The probative medical evidence, standing alone, does not establish an acute psychiatric/psychological condition, which, by itself, is expected to prevent claimant from performing customary work functions for the required period of time. The Ph.D. psychologist provided the following diagnoses: reactive depression, secondary to medical problems; and cognitive and literacy deficits. GAF -- 45. The psychologist's reports, when taken in

conjunction with the medical/vocational evidence of record, does not establish a severe mental impairment that would totally preclude substantial gainful activity.

(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 a diagnoses of TIA, hypertension, and diabetes. The physician states that claimant is able to lift 20 pounds occasionally, stand/walk less than two hours in an eight-hour day; and claimant has normal use of her hands/arms and feet/legs. The medical reports, when taken in conjunction with the medical record as a whole, do not establish a severe physical impairment that would totally preclude substantial gainful activity. Claimant's most prominent complaints are related to her two strokes, sleep apnea and memory problems.

(11) Claimant has applied for federal disability benefits; her application is currently pending before the Social Security Administration.

CONCLUSIONS OF LAW

Claimant's Position

Claimant thinks she is entitled to MA-P based on the impairments listed in paragraph #4, above. Claimant's physical impairments are TIA's, hypertension, diabetes, and memory problems. Claimant's psychological diagnoses are Axis I -- reactive depression, secondary to medical problems and cognitive and literacy deficits; Axis V -- GAF 45.

Department's Position

The department recognizes that claimant has been hospitalized for possible strokes. The recent testing shows that she had a possible TIA (transient ischemic attack). In May, 2006, her internist noted a possible stroke with a history of diabetes and seizures.

However, the department concluded that claimant's medical records are incomplete and that a definite assessment of her physical and mental status cannot be made without additional medical evidence.

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/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.

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, p. 34.

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.

A severe impairment is defined as a verified medical condition which totally precludes substantial employment. Duration means the severe impairment is expected to last for 12 continuous months or result in death. SHRT found that the medical evidence was insufficient to make a decision on severity and duration.

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 alleges that she meets Med-Voc Listings 201.01 and 202.01. After a careful analysis of the medical records, SHRT concluded that claimant does not meet the listings cited.

Step 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant has very limited work experience. She has worked only at a sheltered workshop sponsored by

██████████.

The medical evidence of record establishes that claimant is able to perform light/sedentary work which is unskilled and very simple.

The Administrative Law concludes that claimant would be able to return to her position at the ██████████ sheltered workshop. However, claimant would not be able to perform substantial gainful activity in a competitive environment.

Based on the medical/vocational evidence of record, claimant would not be able to perform substantial gainful activity given her memory impairment in combination with her shoulder impairment.

Claimant meets the Step 4 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] at 20 CFR 416.967.

The medical/vocational evidence of record establishes that claimant is able to perform unskilled light/sedentary work.

Claimant's vocational profile shows an individual approaching advanced age (age 54) with a seventh-grade education and a history of unskilled work at a sheltered workshop.

The medical/vocational evidence of record, when taken as a whole, shows that claimant is not able to perform substantial gainful activity at a competitive level. At the present time, claimant's memory impairment makes it very difficult for her to learn job-related instructions and follow them on a daily basis.

During the hearing, claimant testified that the major impediment to her return to work was her short-term memory dysfunction. This condition was verified by the Ph.D. psychologist as follows:

It is recommended that claimant become involved in outpatient psychiatric treatment designed to reduce current levels of depression and stabilize daily functioning. Recent medical problems appear to have further compromised her limited cognitive and literacy skills and to further have impaired claimant's capacity for gainful employment....

Therefore, claimant meets the Step 5 requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P disability requirements under PEM 260.

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

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Marianne Udow, Director
Department of Human Services

Date Signed: August 3, 2009

Date Mailed: August 4, 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.

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