

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: 2007-10541
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 19, 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 in Flint on September 19, 2007. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED]. The department was represented by Ann Edwards (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was mailed to the State Hearing Review Team (SHRT) on October 25, 2007. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT.

After SHRT's second disability denial, the Administrative Law Judge issued the 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 (November 30, 2006) who was denied by SHRT (August 2, 2007 and December 4, 2007). The denial was based on claimant's ability to perform unskilled sedentary work. SHRT relied on Med-Voc Rule 201.21 as a guide. Claimant requests retro MA for August, September and October 2006.

(2) Claimant's vocational factors are: age—48; education—high school diploma; post high school education—attended school to become a certified cosmetologist, certification has now expired; work experience—hair assistant at [REDACTED], nurse aide (20 years experience) direct care assistant (15 years experience).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2003 when she was a nurse's assistant for a long-term care facility.

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

- (a) Obesity;
- (b) Back dysfunction (has gun pellets lodged in her back);
- (c) No cartilage in her right and left knees.

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

OBJECTIVE MEDICAL EVIDENCE (August 2, 2007):

Medical records in file indicate claimant is very obese. She does have complaints consistent with arthritis. Her blood pressure was somewhat elevated (136/82, 146/98). Findings reported on the medical examination report indicated findings were normal, with the exception of her obesity, knee and back pain, and peripheral neuropathy.

ANALYSIS

Medical Records in the file indicate claimant is very obese. She does have complaints consistent with arthritis. Her blood pressure was somewhat elevated, however, there was no evidence of end organ damage. It is not clear what may be causing the peripheral neuropathy. Given the reported findings, she would likely have difficulty performing work that required frequent standing and walking. She should be capable of performing sedentary work.

There was no indication of limitations as a result of a mental impairment. The Medical Examination Report included the physician's opinion that she had no mental limitations.

* * *

SUPPLEMENTAL MEDICAL EVIDENCE (December 4, 2007):

See FIA-282 dated 8/02/07 for the prior medical summary.

Hospital records dated 8/13/07 showed the claimant's diagnoses included acute pain, chronic pain, lumbago, pain in joint, lower leg and essential hypertension (Ex. C page 89). X-rays dated 8/07 of the lumbar spine showed mild degeneration disc disease (DDD) at L4-5 with mild grade I anterolistesis and moderate DDD at L5-S1. There were multiple shotgun pellets in the flank area on the left. The right knee osteophyte formation and joint space narrowing (Ex. C pages 86-88). On exam, she had tenderness of the right knee. Sensation was within normal limits (WNL). Straight leg raise (SLR) was 30 degrees on the right. Motor strength was WNL. Reflexes and gait were WNL (Ex. C page 83).

A DHS-49 form dated 9/07 indicated the claimant had chronic lumbosacral back pain, lumbar spondylosis, right knee pain, osteoarthritis, obesity, HTN and depression. The claimant was 5'7" and 324 pounds. Her blood pressure was 136/82. On exam, she was obese with a limping gait. The claimant has sleep apnea and exertional dyspnea. She has decreased range of motion (ROM) of the LS spine and limbs at times due to right knee pain. There are no neurological abnormalities. She has mood swings and a history of depression. She was alert and oriented (Ex C page 90). The doctor indicated that the claimant could only occasionally lift 20 pounds and stand and/or walk less than 2 hours. She does not medically require an assistive device for ambulation. She did not have any mental limitations (Ex C page 91).

* * *

(6) The claimant performs the following Activities Of Daily Living (ADLs):
dressing, bathing, and light cleaning.

(7) The claimant does not have a valid driver's license and does not drive an automobile on a regular basis. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) [REDACTED] (DHS-49) was reviewed. The physician provided the following current diagnoses: obesity, hypertension, chronic low back pain, knee pain, peripheral neuropathy.

The physician reports that claimant is able to lift less than ten pounds occasionally. She is able to stand/walk less than two hours in an eight-hour day. She is able to sit less than six hours in an eight hour day. She is able to use both hands/arms for simple grasping, and fine manipulating. Unable to use her hands for reaching and pushing-pulling. The doctor reports that claimant is unable to operate foot controls. Claimant has no mental limitations.

(b) A June 25, 2006 internal medicine narrative report was reviewed.

The physician provided the following history: This is a 46-year-old female who complains of back pain ever since she had a gunshot wound injury in 1980 and the back pain followed one year later. She was in the hospital for three months and it appears that she had some left-sided tissue injury and also left lung injury; however, there was no spinal cord injury. She complains of chronic back pain in the lower part of the leg which radiates down both legs. She claims that her pain is sometimes a 10 out of 10 in intensity. The pain goes to the knee area. It is sharp in nature. She cannot walk more than a few feet at a time and she even has a hard time getting around in her own house. She has difficulty walking from the parking lot to my office. She also gets out of breath and has no parathesias in the lower extremities. She cannot climb any staircase. She has severe obesity, weighing more than 350 pounds, possibly 400 pounds. She has gained about 200 pounds in the last 10 years. She was prescribed Vicodin as of January 15, 2006, which she takes three times a day. She has taken Motrin in the past without much relief of pain. She hardly does any exercise. She complains of pain in the knee joints bilaterally for about five years and after she sits for a long time, she has difficulty getting up from sitting position, also has pain and stiffness in the joints in the morning.

The physician provides the following diagnoses:

- (1) Chronic back pain, secondary to musculoskeletal strain;
- (2) Massive exogenous obesity;
- (3) Dyspnea, secondary to obesity.
- (4) The physician provided the following special comments:

Claimant has back pain probably secondary to musculoskeletal strain and activity, as well as obesity. She cannot do any type of work which requires prolonged standing, walking, climbing, etc.

The consulting physical did not rule out sedentary work.

* * *

- (5) A [REDACTED] (DHS-49) was reviewed. The physician provided the following current diagnoses: Obesity, chronic heart failure with edema, arthritis and knee back and hip pain, elevated cholesterol.

This physician states that claimant is totally unable to do any lifting. She is able to stand/walk less than two hours in an eight-hour day. She is able to sit less than six hours in eight-hours in an eight-hour day. She is totally unable to use her hands/arms and totally unable to use her feet/legs to operate foot controls.

(9) The prohibitive medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions. There is no clinical evidence from a Ph.D. psychologist or a psychiatrist in the record that would establish a severe mental impairment. Claimant did not submit a DHS-49D or 49E to establish her mental residual functional capacity.

(10) The prohibitive medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do establish that claimant has morbid obesity, chronic back pain, arthritis, hypertension, osteoarthritis in both knees. Claimant's treating physician opined that claimant is unable to work. This MSO is not supported by the great weight of the evidence.

(11) Claimant's most prominent complaint is her obesity, back pain, and pain in both knees.

(12) Claimant has applied for federal disability benefits. The Social Security Administration recently denied her application. She has filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

* * *

Claimant is a 48-year-old female who has a 12th grade education and a work history of cosmetology. She has the following health issues: morbid obesity, chronic back pain, and arthritis, and hypertension, osteoarthritis in knees, depression and anxiety.

* * *

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform sedentary work. The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department thinks that claimant retains the capacity to perform a wide range of sedentary work.

The department denied claimant's MA-P application based on claimant's vocational profile using Med-Voc Rule 201.21 as a guide.

SDA was denied based on claimant's failure to establish an impairment demonstrating the required severity and duration for 90 days.

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 Family Independence Agency 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 does 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 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/SDA. SGA is defined as the performance of significant duties over a reasonable period of time for pay. Claimant's who are working and performing Substantial Gainful Activity (SGA) is not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

The medical/vocational evidence 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.

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 ability to do basic work activities, claimant does not meet the Step 2 criteria.

SHRT found that claimant meets the severity and duration requirements.

Therefore, claimant meets the Step 2 disability requirements.

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 disability requirements.

STEP #4

The issue at Step 4 is whether claimant is able to perform her previous work. Claimant previously worked as a nurse aide for a long-term care facility. The claimant's work as a nurse aide may be defined as follows:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The medical/vocational evidence of record shows that claimant is not able to lift more than ten pounds. She is not able to stand for long periods and not able to use her hands for fine manipulating and pushing or pulling. Since claimant's previous work as a nurse aide required her to be on her feet continuously for the entire eight-hour shift, and required her to lift weight of 25 pounds or more on a regular basis, claimant is not able to return to her previous work as a nurse aide.

Claimant meets the Step 4 disability requirements.

STEP #5

The issue at Step 5 is whether claimant has a 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]. [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to do unskilled sedentary work. Claimant's vocational profile shows a younger individual (age 38 with a 12th grade education and a history of unskilled work as a nurse aide and direct care provider).

After a careful review of claimant's exertional impairments, the medical evidence establishes that claimant is able to work as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED]. Claimant may need to use a wheelchair to perform the job.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application due to claimant's failure to establish exertional impairments which meet the department's disability requirements.

Although claimant alleges nonexertional (mental impairments) there is no clinical evidence in this record to establish a severe mental impairment. Claimant did not provide a DHS-49D or 49E to establish mental residual functional capacity.

During the hearing, claimant testified that the major impairment to her return to work was back pain secondary to a gunshot wound and bilateral knee pain secondary to arthritis. Evidence of pain, alone, is insufficient to establish disability for MA-P and 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 back pain and knee pain. Claimant currently performs several activities of daily living, and has an active social life with her daughter. In addition, claimant has work experience as a cosmetologist and as a nurse's assistant. A careful review of the entire medical/vocational record shows that claimant is currently able to perform sedentary work.

Therefore, claimant does not qualify for MA-P/SDA disability benefits under Step 5 of the sequential analysis procedure.

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 Step 5 of the sequential analysis as described 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: August 10, 2009

Date Mailed: August 11, 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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cc:

