

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: 2007-13683
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 26, 2007
St. Clair 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, a telephone hearing was held on July 26, 2007 in Port Huron. Claimant personally appeared and testified under oath.

The department was represented by Rose Oliver (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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 provide new medical evidence by the 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) or 90 days (SDA)

(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) 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/SDA applicant (December 5, 2006) who was denied by SHRT (June 25, 2007) due to claimant's ability to perform a wide range of medium work. SHRT relied on Med-Voc Rule 203.28 as a guide.

(2) Claimant's vocational factors are: age--36; education--high school diploma; post-high school education--none; work experience--dog census clerk for [REDACTED], newspaper delivery person (independent contractor), owner/operator of a dog-grooming business.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since July 2006 when she worked as a dog census clerk for [REDACTED].

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

- (a) Depression;
- (b) Short term memory dysfunction;
- (c) Fibromyalgia/muscle and joint pain;
- (d) Migraine headaches;
- (e) Degenerative disc disease.

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

OBJECTIVE MEDICAL EVIDENCE (June 25, 2007):

A 1/2005 MRI of the lumbar spine showed a L-5 herniation (page 20). A 1/2005 x-ray of the lumbar spine was normal (page 42). According to a 1/2007 consultative exam, she was 5' 1" tall and weighed 164 pounds. She had a full range of motion of her back with no neurological deficits. Her gait was normal (pages 44-45).

ANALYSIS: The objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of medium work.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, vacuuming (sometimes), laundry and grocery shopping (needs help). Claimant lives alone. Her sister comes over to help her on a daily basis.

(7) Claimant has valid driver's license and drives an automobile approximately 4 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) A [REDACTED] narrative report was reviewed.

The physician provided the following history: This is a 35-year-old white female who has a history of fibromyalgia. Patient had pain in the legs and tenderness over the elbows and behind her knees and also neck pain and pain in the arms. Patient also complains of tingling in the fingers. These problems started gradually since she was 12 years of age. These pains were associated with insomnia and daytime sleepiness and fatigue. Patient states that the problem has gotten worse with time and lost her business in June 2004 which was dog grooming. This problem was compounded with herniated disc between L4 and L5 and she lost her business. The herniated disc was treated conservatively but her doctor is of the opinion that the reason for not functioning has been fibromyalgia rather than herniated disc. Since 2004, patient tried to do three different jobs, but she had to quit because she could not reach to their expectations. At this time, patient is being supported by her family. Patient takes OxyContin at this time for pain, and it is the only medication that has been effective. At this time neck pain and leg pain are the symptoms she has. Turning the neck to the right and left augments the pain. Patient has also had a few epidural injections in the cervical spine which has been steroids which have been effective.

The physician provided the following diagnosis:

- (1) Fibromyalgia with trigger points over the shoulders and in the back and right and left side of the spine.

- (2) Depression;
 - (3) Degenerative disc disease;
 - (4) Status-post hysterectomy;
 - (5) Migraine headaches.
- (b) A January 18, 2007 psychological narrative report was reviewed.

The Ph.D. psychologist provided the following history: Claimant is a 35-year-old female who alleges disability due to fibromyalgia, a back injury and depression. When asked to describe the nature and extent of her disability, claimant stated, 'I have fibromyalgia that seems to get worse over the years. I have a tough time with my legs and neck. I have a lot of migraines. I have pain all over. I wake up in a lot of pain. They have me on OxyContin, and it takes the edge off. I try to do stretches and keep myself walking and active. I moved from [REDACTED] to [REDACTED] and I lived there for 15 years just trying to get away from this environment. I had my own grooming business, and I injured my back in January of 2004 when I was grooming a dog. I herniated a disc and I was off work for quit a bit. I was unable to return to work because of my back injury and my fibromyalgia. I had to close my business and move back up here for family support. I've suffered from depression for most of my life. Since everything was taken away from me by my back injury and my pain, it's been 'really hard.'

The Ph.D. psychologist provided the following summary: Claimant is a 35-year-old female who alleges disability due to fibromyalgia, a back injury and depression. Claimant indicated that she has never been psychiatrically hospitalized. She has been involved in outpatient counseling at [REDACTED]. * * * Claimant stated that she has not had back surgery, but she did have physical therapy.

Claimant was intermittently tearful throughout today's interview. She expressed feelings of helplessness, hopelessness and worthlessness. Her concentration and attention span were both poor. Claimant's immediate and delayed memory were in the low average range. She was

able to deal with abstract and verbal material. Her judgment appears to be appropriate.

The Ph.D. psychologist provided the following diagnosis Axis I--Major depressive disorder, recurrent, severe; Axis V/GAF--50.

- (c) A January 4, 2005 Medical Examination Report (FIA-49) was reviewed.

The physician provided the following current diagnoses:

- (1) Lumbar strain;
- (2) Suspect prolapsing disc;
- (3) Back pain and numbness.

The physician provided the following physical limitations: Patient is able to lift up to 10 pounds occasionally. Patient is given restrictions of no lifting over 10 pounds, limit bending, twisting and stooping, through February, 2005. Given a script for repeat MRI.

- (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: Major depressive disorder (recurrent, severe), Axis V/GAF--50.

The Ph.D. psychologist report, when taken in context 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 medical condition expected to prevent claimant from performing all customary work functions for the required period of time. The examining physician provided the following diagnoses: lumbar strain, suspect prolapsing disc, back and numbness. The physician states that claimant is

able to lift 10 occasionally. In 2005, the physician gave claimant restrictions of no lifting over 10 pounds, limit bending, twisting, and stooping through February 2005. The physician's report, when taken in conjunction with the medical record as a whole, does not establish a severe physical impairment that would totally preclude Substantial Gainful Activity.

(11) Claimant's most prominent complaint is her fibromyalgia (muscle and joint pain).

(12) Claimant has applied for federal disability benefits; her application was denied.

She filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above.

The medical records show that claimant has severe physical (back) dysfunction and significant mental dysfunction (depression).

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled medium work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The department thinks the medical evidence establishes that claimant has the capacity to perform a wide range of medium work. Based on claimant's vocational profile (younger individual (age 36) with a high school education and a history of unskilled work), MA-P was denied based on Med-Voc Rule 203.28.

SDA was denied because claimant did not establish a 90-day period where she was totally unable to work.

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 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 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/SDA.

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 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 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.

The Administrative Law Judge agrees.

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 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 dog census clerk for [REDACTED]. Claimant's previous work was light/sedentary work.

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

Since claimant's previous work was sedentary, she is physically and mentally able to return to her previous work as a census worker for the county.

Based on the medical/vocational evidence of record, claimant is able to perform her previous work as a dog census taker.

Claimant does not meet Step 4.

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 medium work. Claimant's vocational profile shows a younger individual (age 36) with a high school education and a history of skilled and unskilled work. Based on this analysis, the record substantiates the conclusion that claimant is able to work as a security guard, as a ticket taker for a theatre, as a parking lot attendant or as a greeter at [REDACTED].

During the hearing, claimant testified that the major impediment to her return to work was her muscle and joint pain secondary to her fibromyalgia.

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 muscle and joint pain, secondary to her fibromyalgia. Claimant currently performs many activities of daily living, drives an automobile, takes care of three dogs and a bird, and in large part takes care of herself. The record as a whole establishes that claimant is 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/SDA disability requirements under PEM 260 and 261.

Claimant is not eligible for MA-P/SDA based on Steps 4 and 5 of the sequential analysis procedure.

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 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.

2007-13683/JWS

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:

