

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: 2007-15350  
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 Nancy Wickman (FIS).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team on October 20, 2007. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. Claimant did not submit 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, **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 17, 2005) who was denied by SHRT (July 19, 2007) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.16 as a guide. Claimant requests retro MA for August, September and October 2005.

(2) The claimant's vocational factors are: age—41; education—8<sup>th</sup> grade; post high school education—none; work experience—work as a housekeeper and maintenance worker for Sears, and as a production line worker making auto parts.

(3) Claimant has not performed substantial gainful activity since October 2005 when she worked at [REDACTED] in the housekeeping department.

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

- (a) Asthma;
- (b) Eczema of both feet with pain;
- (c) Back dysfunction with pain;
- (d) Inability to walk for long distances;
- (e) Feet swell bilaterally.
- (f) Depression.

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

**OBJECTIVE MEDICAL EVIDENCE (July 9, 2007):**

A consultative examination of 12/07/2006 reported claimant to be 65 inches tall and weigh 207 pounds. Her blood pressure was 130/78. She was short of breath with a wheeze and she did have increased diameter of her chest and bronchial spasms bilaterally. Heartsounds were normal. On a pulmonary function study she had

an FVC of 2.87 and an FEV1 of 1.87 (Listing Level was 1.25 or less). She did have dyshydrosis of both hands and feet. (Page 4A, 113.)

A chest x-ray of 10/2005 was negative. (Page 107.)

ANALYSIS:

Claimant has evidence of lung disease and has some difficulty breathing. There was no indication of any other significant limitations that would be expected to last. Dyshydrosis of her hands and feet were present with calluses on both feet. However, dyshydrosis along with calluses are normally conditions of fairly short duration.

\* \* \*

(6) Claimant performs the following activities of daily living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping.

(7) 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:

On December 7, 2006 Medical Examination Report was reviewed.

The physician provided the following background:

Claimant is a 41-year-old, obese, white female. She was born with bronchial asthma and suffered with it most of her life. She started smoking at the young age of 13. This only escalated as she got older. She smoked up to two packs of cigarettes a day. Because of her continuing problems with bronchitis, bronchial asthma, coughing and being hospitalized four years ago with pneumonia, she gave up smoking two years ago. She still is short of breath whenever she climbs approximately ten stairs. She is unable to walk for more than one quarter block without getting short of breath. She does have a cough that is persistent most of the day. She brings up whitish phlegm, approximately one-half teaspoon per day.

Claimant also suffers with severe dyshydrosis of both feet and hands. It is so severe that she finds it hard to walk on her feet. She has several calluses on both feet as well. The calluses are so severe that she is unable to walk very comfortably on her feet.

\* \* \*

The physician provided the following impression:

- (1) Morbid obesity.
- (2) Essential hypertension by history.
- (3) Bronchial asthma since birth, not well controlled;
- (4) Moderately severe chronic obstructive pulmonary disease, secondary to cigarette smoking. Patient has now quit since the past two years.
- (5) Essential hypertension by history.
- (6) Major depression.
- (7) Dyshydrosis of both hands and feet.

(9) The medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions. There is no clinical evidence in the record from a Ph.D. psychologist or psychiatrist that indicates claimant is suffering from a severe mental impairment.

(10) The medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do show the following diagnoses: morbid obesity, essential hypertension by history, bronchial asthma, moderately severe COPD, essential hypertension, major depression and dyshydrosis of both hands and feet.

(11) Claimant's most severe impairments are her asthma, and the exczema/dyshydrosis on both feet.

(12) The claimant recently applied for Social Security benefits. Her application is pending before the Social Security Administration.

CONCLUSIONS OF LAW

**CLAIMANT'S POSITION**

Claimant's position is summarized by [REDACTED] in the Hearing Summary:

\* \* \*

Claimant is a 39-year-old female who has an 8<sup>th</sup> grade education and a work history of house cleaning. She has real problems in regards to communication—her parents are deaf and she cannot really read or write. She has the following health issues: cellulitis of the left leg and foot, eczema, asthma, emphysema, hypertension, migraine cephalgia, atypical chest pain, chronic obstructive pulmonary disease, dyspnea, respiratory abnormality and moderated osteoarthritis with chronic abulsion.

\* \* \*

**DEPARTMENT'S POSITION**

The department thinks that claimant has the residual functional capacity to perform light work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of the Social Security listing. The department thinks that claimant retains a capacity to perform a wide range of light work.

The department denied claimant's MA-P application based on her vocational profile and Med-Voc Rule 202.16, as a guide.

SDA was denied based on claimant's failure to establish 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 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).

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 impairments meet the department's definition of disability for MA-P and SDA purposes. PEM 260 and 260. "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. Claimants who are working and performing Substantial Gainful Activity (SGA) are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

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.

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 gainful work and the duration criteria. 20 CFR 416.920(a).

If claimant does not have impairment or combination of impairments which would probably limit her physical 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 and 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 do her previous work. The claimant previously worked as a janitor for Sears.

Claimant's work as a janitor was medium work:

**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 do the required lifting and standing in order to perform work as a janitor. Claimant has standing limitations and listing limitations that preclude her from returning to her previous work as a janitor.

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], 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 39) with an 8<sup>th</sup> grade education and a history of work as a janitor.

Based on a careful analysis of claimant's exertional impairments, claimant is able to work as a ticket taker for a theater, as a parking lot attendant or as a greeter for [REDACTED].

Based on this analysis, the department correctly denied claimant's application for MA-P/SDA.

Although claimant reports mental impairments (nonexertional), there is no probative evidence from a Ph.D. psychologist or psychiatrist of a severe mental impairment.

During the hearing, claimant testified that the major impediment to her return to work was her asthma and her inability to walk due to painful skin conditions on both feet.

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. Also, claimant did not provide a DHS-49D or DHS-49E to show her residual functional capacity.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her asthma and her skin condition on both feet. Claimant currently performs many activities of daily living, and has an active social life with her boyfriend. The medical/vocational evidence taken as a whole, shows that claimant is able to perform sedentary work.

Claimant does not qualify for MA-P/SDA 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 the 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.

JWS/tg

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