

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: 2007-17059
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 11, 2007
St. Joseph 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 Centreville on September 11, 2007. Claimant personally appeared and testified under oath. [REDACTED] was listed as the authorized representative, but did not appear at the hearing for some unknown reason.

The department was represented by Jan Ferguson (FIM) and Caroline Baker (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirements 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 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/SDA applicant (March 30, 2007) who was denied by SHRT (August 16, 2007) due to claimant's ability to perform her past relevant light work.

(2) Claimant requests retro MA for January 2007.

(3) Claimant's vocational factors are: age--59; education—high school diploma; post-high school education—none; work experience—press operator for [REDACTED] and bartender and waitress at the [REDACTED].

(4) Claimant has not performed Substantial Gainful Activity (SGA) since she was a press operator for [REDACTED] in December 2006.

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

- (a) Left knee pain;
- (b) Left knee work injury (2000);
- (c) Status post left knee surgery (2000);
- (d) Cannot drive;
- (e) Sharp chest pain;
- (f) Eyes do not focus well;
- (g) Takes Prozac for depression;
- (h) High blood pressure.

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

OBJECTIVE MEDICAL EVIDENCE (August 16, 2007):

* * *

In 7/2007, she presented to the ER with chest pain. Her physical exam was normal and a heart attack was ruled out (pages 20 through 27). According to a 5/2007 consultative exam, claimant was 5'5" tall and weighed 230 pounds. Her blood pressure was

160/100. Her lungs were clear. She walked with a limping gait, but did not exhibit any neurological deficits. She had a full range of motion of all joints.

ANALYSIS:

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

* * *

(7) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing (slowly), cooking, dish washing, light cleaning, laundry, vacuuming and grocery shopping.

(8) Claimant does not have a valid driver's license, and does not drive an automobile. Claimant is not computer literate.

(9) The following medical records are persuasive:

(a) An August 27, 2007 Medical Examination Report (DHS-49) was reviewed. The nurse practitioner provided the following diagnoses: situational depression and hypertension. The nurse practitioner reported that claimant has no physical limitations and no mental limitations.

(b) A May 23, 2007 [REDACTED] internist's report was reviewed.

The physician provided the following chief complaints:

Knee and breathing problems, unstable angina, heart problems and hypertension.

The physician provided the following history:

Claimant has left knee pain since 2000. [REDACTED] orthopedist, did surgery but she continues to have the left knee pain. At work in the plastics factory, she was on restrictions after the orthopedic surgery. This included no climbing or lifting, but she was able to sit/stand at will when needed. She worked with these restrictions until

January 2006. Her pain is all the time and she rates it 8-9/10. Since her orthopedic surgery, she gained 115 pounds.

Claimant was assessed in 2007 for chest pains and headaches at the hospital in [REDACTED]. She reports that all the cardiac studies were normal. The pain is persistent about her bra line and a band-like in the left arm and in the mid-humerus.

Claimant does her own light household chores. She lives in a one-story home.

Claimant walks steps, is literate, and is ADL independent and last worked for the plastic company until it went bankrupt in January 2006.

The physician reports the following examination reports:

EXTREMITY:

No cyanosis or edema of limbs; no joint erythema or edema; radial and pedal pulses intact; the client leads with the left leg when she gets on to the portable floor scale and comes off the scale with the right leg indicating that she is able to sustain her weight on the painful leg (this is usually done the opposite when an individual has a left knee that will not support the weight); she does not like to be touched about the left knee; initially she would not fully extend the left knee, but with encouragement she did extend the left knee completely.

NEUROMUSCULAR:

* * *

Straight-leg negative bilaterally in the seated position for sciatic pain, but she had a trembling of the left thigh with this maneuver with full extension due to pain at the left knee.

* * *

Range of motion normal to all areas including the left knee, but the last 30 degrees was painful; ROM of the left knee is 0-130 degrees.

Gait: Antalgic gait with limping on the left leg both during direct observation and with surreptitious examination when

she walked down the hallway of the building; client could step, climb, heel and toe walk and tandem and ¼ squats without assistance.

The physician provided the following conclusions:

- (1) Hypertension with no evidence of cardiac symptoms per her history. Chest discomfort is more compatible with parasthesias on the chest wall nerves since it persists for hours and is better when she does not wear undergarments. The medical records can be reviewed from the February 2007 cardiology notes.
- (2) Obesity and anxiety is indicated by her affect and scratching on her face. The lesions are compatible with neurodermatitis.
- (3) Left knee pain. The added weight over the last six-seven years only makes the left knee more painful. It is likely that she cannot squat and lift from the floor but she would be comfortable with the light restriction where sitting and standing are needed (where permitted).

* * *

(9) The probative medical evidence does not establish an acute mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There is no probative clinical evidence in the record that claimant has a severe mental impairment. The diagnosis of situational anxiety was made by a nurse practitioner. Claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has the following conditions: hypertension, obesity and anxiety, and left pain. The consulting physician did not state claimant is totally unable to work.

(11) Claimant's most prominent complaints are her left knee pain and her situational anxiety.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. Her application was recently denied by the Social Security Administration. She has filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized in her hearing request as follows:

I feel that I am disabled. Please have the judge (come) in person.

Claimant thinks she is disabled based on the impairments listed in Paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform a wide range of light unskilled work.

The department thinks that claimant's past work (bartender) was light. The department denied claimant's application based on her ability to perform past relevant 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).

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/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.

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. 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 result in death, it must have lasted or be expected to last for a continuous period of at least 12 month. 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).

The claimant does not have an impairment or combination of impairments which profoundly limit her physical or mental ability to do basic work activities; claimant does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT did not comment on claimant's severity and duration. The Administrative Law Judge concludes that claimant does not meet the Step 2 disability criteria based on an absence of evidence showing the claimant's impairments have lasted for continuous 12 months.

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 do her previous work. Claimant previously worked as a machine operator for [REDACTED]. Claimant's work as a machine operator may be defined as follows:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The medical /vocational evidence of record states that claimant is able to return to her previous work as a press operator. However, claimant is now grossly obese and is not able to stand for an eight-hour shift.

Therefore, 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 establishes that claimant is able to perform sedentary/light work. This means that claimant is able to perform work as a carry-out clerk at a grocery store, as a ticker taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

During the hearing, claimant testified that a major impediment to her return to work was her left knee pain secondary to her left knee surgery in 2000. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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 left knee pain, secondary to her left knee dysfunction. Claimant currently performs many activities of daily living and thinks that she is able to return to work. Claimant has applied for several jobs, but has not been hired. Claimant is not certain why her applications for employment have been turned down. Claimant does not qualify for MA-P/SDA benefits under Step 5 of the sequential analysis procedure. Claimant is also disqualified for disability benefits based on Med-Voc Rule 202.22, as a guide.

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 disability requirements under PEM 260. Claimant is not eligible for MA-P based on Step 5 of the sequential analysis procedure as provided above.

Accordingly, the department's denial of claimant's MA-P 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 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.

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cc:

