

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: 2007-17228
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 18, 2007
Lapeer 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 Lapeer on December 18, 2007. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Pat Bentley (FIM)

Claimant requested additional time to obtain an additional medical examination for submission to SHRT. Claimant waived the time limit requirements so that her new medical evidence could be reviewed by SHRT. Claimant did not submit new medicals by the Record Close Date.

ISSUE

Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, 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 a MA-P/retro applicant (January 12, 2007) who was denied by SHRT (August 17, 2007) due to claimant's failure to submit probative medical evidence to establish a disability.

(2) Claimant's vocational factors are: Age—63; education—high school diploma; post high school education—received a certificate in Medical Transcription from the [REDACTED]; work experience—medical transcription (27 years).

(3) Claimant is currently self-employed as a medical transcriptionist. She works from her home approximately 10 hours a week/40 hours a month. She earns approximately \$600 per month gross for her services. Claimant has been working continuously as a medical transcriptionist for 27 years.

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

- (a) Not able to work full-time;
- (b) Unable to sit for long continuous periods;
- (c) Carpel Tunnel symptoms in both wrists;
- (d) Wears wrist guards;
- (e) Wears elbow brace when working;
- (f) Chronic kidney infection.

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

OBJECTIVE MEDICAL EVIDENCE (AUGUST 17, 2007):

Medical Examination Report of 12/2006 indicated claimant was 66" tall and weighed 280 pounds. She reportedly has degenerative joint disease in the right hand and knees bilaterally.

Hospital records of 11/2006 indicated claimant was treated for an obstructing left renal calculus (kidney stone) that was causing acute renal failure. After placement of a stent, her condition was much improved.

Hospital records of 8/1998 indicate claimant had a successful cervical fusion of C5-6.

ANALYSIS:

A detailed current physical examination with x-rays of the right hand and knee (whichever one is worse) is needed. She has past work as a medical transcriber, which is considered sedentary. However, if she has limited use of the right hand she would not be able to perform this work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, vacuuming (some), laundry and grocery shopping. Claimant lives alone.

(7) Claimant has a valid driver's license and drives an automobile approximately 3 times a month. Claimant is highly computer literate since she currently uses a computer to produce emergency room reports for a hospital. Claimant currently earns \$600 a month.

(8) The following medical records are persuasive:

See the SHRT report, dated August 17, 2007, summarized in paragraph 5 above.

(9) The probative medical evidence does not establish an acute (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records show the following exertional impairments: Chronic kidney infection, status post kidney stone.

(10) Claimant is currently receiving RSDI (retirement benefits) from 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.

DEPARTMENT'S POSITION

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

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The medical evidence of record indicates that claimant retains the capacity to perform skilled sedentary work as a medical transcriptionist.

The department denied claimant's MA-P application based on claimant's ability to perform skilled sedentary 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 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 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 physical impairments meet the department's definition of disability for MA-P purposes. PEM 260. "Disability," as defined by MA-P 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 by the regulations as follows:

- (a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before. 20 CFR 416.972(a).

The medical/vocational evidence of record shows that claimant is currently employed part-time as a medical transcriptionist for a hospital. In this capacity, claimant receives dictation from physicians (over the internet) and transcribes the emergency room dictation onto a report in a form specified by the hospital. Claimant then transmits the emergency room report, which she has typed, back to the hospital for dissemination and storage.

Claimant currently works approximately 10 hours a week/40 hours a month from her home and earns approximately \$600 a month, as a medical transcriptionist.

Claimant's current part-time work meets the requirements of the regulation cited above and therefore must be considered Substantial Gainful Activity.

Since claimant is currently performing Substantial Gainful Activity, she is not eligible for MA-P benefits at this time. In summary, claimant does not qualify for MA-P benefits under Step 1 of the sequential analysis as described above.

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.

Accordingly, the departments 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 17, 2009

Date Mailed: August 17, 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/sd

cc:

