

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: 2007-17694

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 20, 2007

Grand Traverse 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 in Traverse City on December 20, 2007. Claimant personally appeared and testified under oath.

The department was represented by Colleen Ryan (FIM).

The Administrative Law Judge appeared by telephone from Lansing. Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on December 20, 2007. Claimant waived the timeliness requirements so that her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge made the final 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)?

(2) 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 applicant (February 9, 2007) who was denied by SHRT (November 6, 2007) due to insufficient medical evidence.

(2) Claimant's vocational factors are: Age—42; education—high school diploma; post high school education—Bachelor's degree in Marketing; work experience—internet marketing manager for auto dealership, manager at a Laundromat, and marketing manager for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since [REDACTED] when she was the internet marketing manager for a local automobile dealership.

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

- (a) Right eye is hyper-sensitivity to light;
- (b) Facial pain in right cheek and jaw;
- (c) Takes narcotic medications;
- (d) Unable to drive due to side-effects from narcotics;
- (e) Short-term memory impairment;
- (f) Decreased concentration;
- (g) Sleeps a lot.

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

**OBJECTIVE MEDICAL EVIDENCE** [REDACTED]:

Medical Examination Report of [REDACTED] reported claimant to have normal findings with the exception of pain on the right side of her face with intolerance of light and sound and touch (page 26).

Neurologist note of [REDACTED] indicated claimant complained of constant pain with the addition of a pulsating pain in her right temple. Her physical examination was otherwise within normal limits. Dilantin was added with the expectation that this would improve the pain. Note of [REDACTED] indicated the pain had started on [REDACTED] (pages 33 and 31).

**ANALYSIS:**

Claimant has continued to have complaints of significant pain despite treatment and medication adjustments. Her condition would normally resolve before 12 months have passed.

Claimant's condition has lasted more than 909 days and therefore SDA is being approved as equal to Listing 11.02 due to the intractable pain. However, additional current medical evidence is needed prior to approving MA-P.

Because of the variety of treatment options available, having tried Trigeminal neuralgia doesn't necessarily mean you are doomed to a life of pain. Doctors usually can effectively manage the trigeminal neuralgia, either with medications or surgery.

- (6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping (sometimes), vacuuming (sometimes), laundry (sometimes) and grocery shopping (needs help).
- (7) Claimant has a valid driver's license and drives an automobile approximately once a month. Claimant is computer literate.
- (8) The following medical records are persuasive:
  - (a) A [REDACTED] neurological report was reviewed.

The neurologist provides the following history:  
Claimant tells me that she continues to complaint about essentially, constant pain. She describes burning pain in

the right cheek which radiates into her neck. She describes that her face feels like “an abscessed tooth.” She describes an electrical shock sensation. Since her last appointment she has also started to experience a pulsating pain in her right temple. Claimant complains that she essentially sleeps or is in pain. The pain has not improved after increasing Tegratol. She denies any other new complaints.

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ASSESSMENT: Claimant returns for follow-up for a history of Trigeminal neuralgia. She has not responded to an increase of the Tegratol dose. I advised her decrease Tegratol again to 400 mg bid.

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(9) The probative medical evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. There are no psychiatric/psychological records or reports in the file to establish a significant mental disorder. Claimant has not submitted a DHS-49D or a DHS-49E.

(10) 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 do show the following exertional impairments: Trigeminal neuralgia, with constant pain.

(11) Claimant has not applied for federal disability benefits. Her application was recently denied. She has appealed.

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's medical evidence is insufficient to establish MA-P eligibility at this time.

The department has requested additional treatment records from claimant's neurologist and her treating physician.

**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 mental/physical impairments meet the department's definition of disability for MA-P purposes. PEM 260. "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.

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 month. 20 CFR 416.909.

Also, to qualify for MA-P, 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 physical/mental ability to do basic work activities, she does not meet the Step 2 disability criteria.

SHRT found that claimant's medical evidence does not meet the severity and duration requirements for MA-P purposes.

Therefore, claimant does not meet 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 do her previous work. Claimant previously worked as an internet marketing manager for a local automobile dealership. Claimant's work as an internet marketing manager was sedentary work.

The medical evidence of record establishes that claimant has constant pain and is taking narcotics to treat that pain. However, the medical records do not establish that claimant is totally unable to do even sedentary work.

Therefore, claimant does not meet 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.

Claimant has the burden of proof to show by the medical evidence that her mental/physical impairments meet the department's definition of disability for MA-P purposes.

Claimant has not established that she is eligible for MA-P due to a mental impairment.

Claimant has established that she has pain secondary to Trigeminal Myalgia.

Claimant is taking narcotics to minimize the pain she is experiencing in her face and head.

The medical evidence does not totally preclude claimant from performing light/sedentary work (SGA). This means claimant is able to work as a ticker taker for a theatre, as a parking lot

attendant or as a greeter for Wal-Mart. Based on an analysis of claimant's non-exertional and exertional impairments, the department correctly denied claimant's MA-P application.

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 disability requirements under PEM 260.

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: February 5, 2009

Date Mailed: February 6, 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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