

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: 2007-19112  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 27, 2007  
Ottawa 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 Holland on November 27, 2007. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Dan Boader (Program Manager).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on February 11, 2008. Claimant waived the timeliness requirement 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 an MA-P/retro applicant (April 16, 2007) who was denied by SHRT (September 19, 2007) due to claimant's ability to perform her past relevant work.

(2) Claimant's vocational factors are: age--43; education--high school diploma, post-high school education--none; work experience--hi-lo driver and shelf stocker, cashier at gas station, and cashier at [REDACTED] restaurant.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she was a hi-lo driver and shelf stocker in June 2006.

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

- (a) Chronic low back pain;
- (b) Degenerative disc disease;
- (c) Osteoarthritis;
- (d) Left hip osteoarthritis;
- (e) Bulging discs;
- (f) Bilateral frozen shoulders'
- (g) Status-post right shoulder surgery;
- (h) Surgery planned for left shoulder;
- (i) Bursitis in both shoulders'
- (j) Edema in legs and ankles;
- (k) Sleep apnea;
- (l) Esophageal/throat dysfunction.

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

**OBJECTIVE MEDICAL EVIDENCE (September 17, 2007):**

Operative report of 9/2006 and 12/2006 indicated claimant had arthroscopic surgery of her right shoulder for re-tear of her rotator cuff. (Pages 50, 62).

Office note of 9/22/2006 reported claimant was post-op arthroscopic repair of her right shoulder with the wound looking well. Note of 10/16/2006 reported claimant had fallen and hit her right shoulder. Note of 4/18/2007 indicated claimant was doing very well since 12/2006 surgery and would call when she is ready for surgery on the left. (Pages 6, 7 and 9).

██████████ note of ██████████ indicated her gait was normal, sensation was intact, leg strength was strong. She had full movement of her hips without pain.

X-ray of her lumbar spine reported mild degenerative disease with spondylosis.

ANALYSIS:

Claimant had a set-back with her right shoulder after she re-injured it shortly after her first surgery. However, after her second surgery, healing occurred and she did well. She was reported to have problems with her left shoulder as well. There is no indication of an impairment that would pose significant limitations in her spine, hips or feet.

Claimant was also noted to have bariatric surgery in the past that helped her lose weight.

\* \* \*

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

(7) Claimant has a valid driver's license and drives an automobile approximately 10 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A November 23, 2007 internal medicine note was reviewed. [Claimant's] family physician reports the following:

I have known [claimant] since July 7, 2006 when she came to me with a past medical history of significant chronic lower back pain secondary to degenerative disc disease and degenerative osteoarthritis, endomorphism requiring bariatric surgery, bilateral frozen shoulders, bilateral shoulder bursitis

with impingement spondylosis of the lumbar spine, multiple joint arthropathy, dependent leg edema, anemia, esophageal stricture, dyslipidemia, hemorrhoids, and a history of perforated gastric ulcer secondary to steroid use.

As one can summarize, [claimant] suffers from significant musculoskeletal problems. These have failed pain management with epidural steroid injections, physical therapy, shoulder surgeries, steroidal and non-steroidal analgesics, and muscle relaxants. Currently, she is dependent on narcotic analgesics for pain control.

[Claimant's] arthritis has emphasized her physical limitations as well as mental stress, resulting in the inability to be gainfully employed and the suffering of situational depression. At times she is even unable to perform some of the activities of her daily living.

\* \* \*

- (b) A December 3, 2005 radiology report was reviewed. The impression is:

Mild degenerative disc disease and spondylosis with no acute findings noted.

(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 clinical evidence in the record that claimant has been evaluated by a psychiatrist or a Ph.D. psychologist. Claimant did not submit a DHS-49D or DHS-49E that would establish any severe mental limitations.

(10) The probative medical evidence, standing alone, 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 chronic lower back pain secondary to degenerative disc disease and degenerative osteoarthritis, stomach problems, bilateral frozen shoulders, spondylosis of the lumbar spine, multiple joint arthropathy, and leg edema. Her

family physician states that she is totally unable to work. The family physician's opinion cannot be given controlling weight under 20 CFR 416.927(c) and (d).

(11) Claimant's most prominent impairment is her bilateral shoulder dysfunction.

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

## CONCLUSIONS OF LAW

### CLAIMANT'S POSITION

Claimant's position is summarized in the November 27, 2007 letter submitted by her attorney as follows:

\* \* \*

Claimant suffers from a degenerative disc problem in the lumbar region of her spine, resulting in chronic pain. Both shoulders are frozen. Both shoulders have bursitis. She has dependent leg edema which causes her to need to keep her legs elevated. She has also been diagnosed with sleep apnea.

\* \* \*

The medications (especially pain medications) make her feel tired, groggy most of the time. These medications only deaden the pain. They do not make it go away. They make her unable to focus and concentrate.

\* \* \*

### DEPARTMENT'S POSITION

The department thinks that claimant is able to perform her past relevant work.

The department thinks that claimant should avoid overhead reaching and heavy lifting. However, she retains the capacity to perform a wide range of medium work. She may have difficulty performing the duties of a hi-lo driver, however, she also has a history of work as a cashier and should be capable of performing the duties involved in that type of work.

Claimant retains the physical residual functional capacity to perform a wide range of medium work. Claimant's past work as a cashier is light work as it is normally performed. Therefore, claimant retains the capacity to perform her past relevant work.

The department denied MA-P based on claimant's ability to perform past relevant work (SGA).

### **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 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 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 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 to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months from the date of application. 20 CFR 416.909.

Also, to qualify for MA-P, claimant must satisfy both the gainful work and duration criteria. 20 CFR 416.920(a)

If 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 found that claimant meets the severity and duration requirements.

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 disability based on the Listings.

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 hi-lo operator.

Claimant's hi-lo operator work may be defined as follows:

**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 has a reduced ability to lift.

The clinical evidence provided by claimant's treating physician does establish that claimant is not able to return to her previous job as a hi-lo operator. The disability opinions submitted by claimant's treating physician are not supported with clinical evidence. This [REDACTED] cannot be given controlling weight under 20 CFR 416.927.

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 *Dictionary of Occupational Titles*, published by the U.S. Department of Labor at 20 CFR 416.967.

The medical evidence of record, taken as a whole, establishes that claimant is able to perform sedentary/light work. Claimant is able to work as a ticket taker for a theatre, as a pizza delivery driver, as a parking lot attendant, and as a greeter for [REDACTED]

During the hearing, claimant testified that the major impediment to her return to work was her back and shoulder pain. 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 combination of impairments. Claimant currently performs extensive and numerous activities of daily living, has an active social life, drives an automobile 10 times a month and is computer literate.

Based on this analysis, 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 that claimant does not meet the MA-P disability requirements under PEM 260. Claimant is not disabled for MA-P purposes based on Steps 4 and 5 of the sequential analysis, as described 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: July 23, 2009

Date Mailed: July 27, 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/cv

cc:

