

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: 2007-19207
Issue No: 2009; 4031
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].

The department was represented by Pat Bentley (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on January 18, 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) 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 21, 2006) who was denied by SHRT based on claimant's ability to perform her past relevant work. Claimant requests retro MA-P for August, September and October 2006.

(2) Claimant's vocational factors are: age--47; education--high school diploma, post-high school education--none; work experience--aide for a group home for mentally handicapped people, whose responsibilities were cleaning, cooking and child care; she also worked in an electronics repair shop as a clerk, as a sales representative for a paper company, and in the shipping department of a tub and tile store.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as an aide in a group home for mentally retarded persons in 2003.

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

- (a) Unable to sit for long periods of time;
- (b) Unable to stand for long periods of time;
- (c) Unable to lift;
- (d) Chronic abdominal pain;
- (e) Heart dysfunction with TIA episode;
- (f) Mitral valve prolapse;
- (g) Status-post six hernia repairs; and
- (h) Depression.

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]:

Consultative examination of [REDACTED] reported claimant weighed 225 pounds, had a bulge and tenderness present at the hernia site in her abdomen. Findings on exam were otherwise normal. Her ears were normal. She reportedly denied depression, but did admit to having anxiety. She was noted to be alert and oriented with normal higher functioning. (Page 3).

ANALYSIS: Due to her multiple surgeries for her hernia, she may have difficulty with heavy lifting and constant stooping and crouching.

* * *

- (6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing (needs help), cooking (sometimes), laundry (needs help), and grocery shopping (uses an Amigo). Claimant does not use a cane, walker, wheelchair or shower stool.

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

- (8) The following medical records are persuasive:

- (a) A [REDACTED] internal medicine report was reviewed.

The internist provided the following history: This is a 46-year-old female who complains of chest pain off and on for the last two years. The pain comes at any time, unrelated to any exertion, not accompanied by nausea or vomiting. Sometimes it radiates, sometimes it does not. Her discussion of the pain is very vague. It is mostly in the retrosternal area. She underwent cardiac catheterization at [REDACTED] in [REDACTED] on [REDACTED] and so was told to have a mitral valve prolapse. She was not recommended any surgery. The pain is sometimes sharp or dull and sometimes burning. At times, it radiates to the left arm and sometimes it radiates to the back. She occasionally wakes up from her sleep with chest pain. No shortness of breath.

She complains of abdominal cramping pain off and on. She had about 8-9 hernia repairs, 5 on the right and 3-4 in the per umbilical area, but still she has another bulge in the same area. The last time she had laparoscopic surgery. The pain comes and goes, is cramping in nature. She has more pain in the abdomen than in the chest. She sometimes has constipation and has had no bowel movements for the last 3 days. She also sometimes has diarrhea and when she does, she will have 4-5 bowel movements per day. No blood in the stool. She had a colonoscopy which was normal, in [REDACTED] of [REDACTED]. She also has poor sleep pattern and sleeps maybe 3-4 hours a night. She feels tired a lot. Denies any depression, but does have anxiety. She has taken Toprol-XL 25 mgs. qd, her chest pain is a lot less now.

DIAGNOSIS:

(1) Recurrent abdominal pain, secondary to abdominal hernias and possible irritable bowel syndrome; (2) mitral valve prolapse; (3) anxiety.

SPECIAL COMMENTS:

Claimant has abdominal pain, probably related to irritable bowel syndrome. She has not been diagnosed with this condition, but it is a probability and she is not totally disabled.

* * *

(b) A [REDACTED] psychological evaluation was reviewed.

The psychologist provided the following general observations:

This 44-year-old female was seen for psychological evaluation on [REDACTED]. This client indicates that she is capable of driving, although she was transported to this appointment by her husband. Client adds that she usually does not drive very often nor very far.

Physically, this individual presents herself in a somewhat marginal fashion for her age and sex, secondary to her weight. However, this client also looks older than her life age of 44. This individual reports that she is uncertain of her height, although she reports her weight at 229 pounds. In general, her posture seems rather uncomfortable. Her gaits tends to be very sluggish.

* * *

In school, this client reports that she did average, graduating from high school, as well as completing a couple of college classes. Next, in regards to her employment, this client reports that her most recent job involved working as an aide in a group home for the mentally retarded. This client states that she last worked in February of 2003. However, secondary to her physical/mental problems, this client ultimately found herself unable to continue working.

* * *

Medically, this individual reports that she suffers from a hernia on the right side of her body such that she is unable to do very much in regards to physical activities. In such regard, this client also reports that she suffers from a great deal of depression secondary to her physical/medical condition, but also her inability to function in the manner in which she had once been capable. This client also reports that she experiences numbness to her right hand. Further, this client indicates that she also experiences a sensation of tightness affecting her back. This client, however, indicates that she is unable to afford the cost of medical services such that she has left such conditions untreated. Nonetheless, this client reports that she has undergone at least 12 different surgeries. However, she adds that she really does not desire to undergo any further surgery, if at all possible (although this is due in great part to her financial concerns). Furthermore, this client also speaks of having some type of problems with her knees. She also reports dental problems as well.

* * *

DAILY FUNCTIONING:

This individual and her husband are presently residing with her mother in [REDACTED]. On a typical day, this client indicates that she is usually up between 7:00 a.m. and 7:30 a.m. Once up, this client states that she initially prepares something to eat for herself and her husband. She reports that she also spends some of her time watching television. She adds that she sometimes engages in craft work. Occasionally, she attempts to complete some of the usual chores of the household. This client adds, however, that she is very limited in regards to what she is capable of doing, secondary to her physical/medical problems. This

client also speaks of being very much afraid to do much at all for fear of further aggravating her current physical/medical problems. Nevertheless, this client indicates that she is reasonably well able to provide for her own personal care.

DIAGNOSES:

Axis I--Major depression, recurrent, moderate;
Axis V--GAF 52.

- (c) A [REDACTED] independent internist examination was reviewed.

Chief Complaint:

* * *

- (1) Hernia surgery. Apparently, the patient had her first ventral hernia repair in [REDACTED] at [REDACTED], [REDACTED]. Subsequently, she had 5 more surgeries for recurrence in the same place, and then she moved to the [REDACTED] area, and she had 2 or 3 more surgeries subsequently. The last surgery was in [REDACTED] of this year. The patient states that after the surgery, she did well and felt well. Now for the last couple of months, she is having pain in the area. She was worrying whether she has a recurrence of the hernia or not. The patient does not have any bowel problem or urine problem. She knows that she has gained some weight, but she does not know how much weight she has gained. Her pain in the abdomen is mainly particularly when she bends over or tries to squat or kneel. She gets pain in the operation area; otherwise, she does not have any pain.
- (2) Wrist pain and numbness. The patient has been having pain in the wrists and numbness in the right hand and occasionally left hand for the last 3 to 4 years. She never told anybody for this. It is getting worse for the last year or so. She worked in different departments where she has done a lot of typing, etc.
- (3) Right knee problem. Currently, the patient had a right knee arthroscopy surgery in [REDACTED] for meniscus. She was doing fine until about [REDACTED]. She started having right knee pain. She can walk about one block and then she would have pain. She occasionally takes a

Vicodin tablet. She also has difficulty in squatting and kneeling because of the right knee pain.

- (4) Decreased hearing with right ear. Patient states that she has been having decreased hearing with the right ear since [REDACTED]. She does not know what this is from, but can hear a high pitched sound without difficulty.

* * *

CONCLUSION:

No charts available to review. Appears that this patient has got a clinical evidence of bilateral carpal tunnel syndrome, which is mild in nature with good grips. The patient has got recurrent ventral hernia repairs, 7 or 8 times in the past, with the last one being in [REDACTED]. She has got tenderness over the right lower quadrant that might be the result of the scar formation, but no recurrence of the hernia. The patient has wax in both ears, which is causing some of her hearing problems. The patient has right knee degenerative arthritis with some limitations of motion.

* * *

- (9) On [REDACTED], SSA awarded claimant RSDI benefits. The disability onset date is [REDACTED].

CONCLUSIONS OF LAW

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).

Since SSA has awarded claimant benefits, the Administrative Law Judge does not need to decide the issue of disability. The Administrative Law Judge concludes, based on the evidence of record and the decision made by SSA, that claimant is entitled to approval of her November 21, 2006 application for retro MA-P benefits for the months of August, September and October 2006.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly denied claimant's application for MA-P and SDA.

Accordingly, the department's denial of claimant's MA-P/SDA and for retro MA for August, September and October 2006 is hereby, REVERSED.

SO ORDERED.

/s/
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 9, 2009

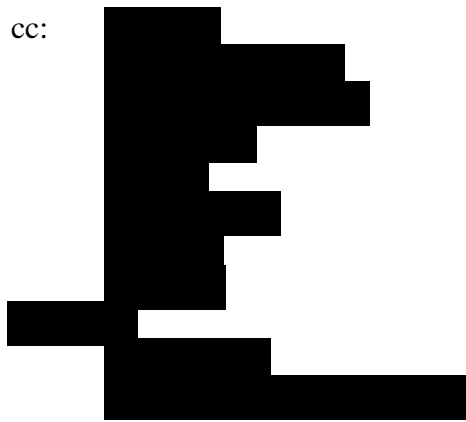
Date Mailed: March 10, 2009

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:

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