

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: 2007-19857
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 13, 2007
Kalamazoo 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 Kalamazoo on November 13, 2007. Claimant personally appeared and testified under oath.

The department was represented by Robert Carins (ES).

Claimant requested additional time to submit new medical evidence. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. Claimant did not submit new medicals by 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) 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 (April 18, 2007) who was denied by SHRT (September 26, 2007) due to insufficient medical information. SHRT recommended that claimant submit an updated medical examination report, at State expense.

(2) Claimant's vocational factors are: age--55; education--7th grade, post-high school education--GED and obtained a certificate as a carpenter's apprentice; work experience--self-employed house cleaner, fish house laborer in [REDACTED], fish house laborer in [REDACTED], and commercial painter.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a commercial painter in approximately 2002.

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

- (a) Right shoulder pain;
- (b) Status-post right carpal tunnel surgery;
- (c) Back pain.

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

OBJECTIVE MEDICAL EVIDENCE (September 26, 2007):

In 5/2007, her internist noted back pain, right shoulder pain, reflux, bilateral carpal tunnel syndrome, and anxiety as diagnoses. On exam, she had some lumbar tenderness and limitation of motion of her right shoulder (pages 12-13).

ANALYSIS:

The evidence in the file is insufficient to assess the current level of functioning. Additional medical evidence is recommended.

* * *

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking, light cleaning, laundry and grocery shopping.

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

Claimant is computer literate.

(8) The following medical records are persuasive:

(a) A May 9, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses:

- (1) (Illegible);
- (2) Chronic right shoulder pain;
- (3) Bilateral carpal tunnel syndrome;
- (4) Depression;
- (5) GERD.

The physician reported the following physical limitations: Claimant is totally unable to lift any weight. No limitations in her ability to stand, walk, or sit. Claimant is totally unable to use her hands/arms and totally unable to use her feet/legs.

(b) An April 27, 2006 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following diagnoses:

- (1) Chronic right shoulder pain (status-post surgery);
- (2) Left wrist sprain;
- (3) Hepatitis C infection;
- (4) Depression;
- (5) Chronic shoulder blade pain;
- (6) GERD.

The physician provided the following limitations: Claimant may lift less than 10 pounds. Claimant has no limitations on her ability to stand, walk, and sit. Claimant is able to use her left hand for simple grasping and reaching. Claimant is not able to use either of her feet/legs.

(9) The probative medical evidence does not establish an acute physical condition expected to prevent claimant from performing all customary work functions for the required period of time. There is insufficient clinical evidence that claimant is totally unable to use her hands and her feet/legs. The physician's opinion reported in the two recent DHS-49 forms is not supported by probative clinical evidence. The recent DHS-49 reports extensive work limitations; however, they are not clinically documented.

(10) Claimant recently applied for federal disability benefits with the Social Security Administration. The Social Security Administration denied claimant's application for disability; she has filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that there is insufficient medical evidence in claimant's file to determine her current level of functioning.

SHRT requested that claimant obtain a complete physical examination by a licensed 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).

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).

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).

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).

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).

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 and 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.

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 months. 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).

If claimant does not have an impairment or combination of impairments which profoundly limit her ability to perform basic work activities, claimant does not meet the Step 2 disability criteria. SHRT found that claimant's medical evidence was insufficient to establish the required disability.

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 a commercial painter. Claimant's work as a commercial painter may be classified as medium work:

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 is not able to do the required standing, climbing, reaching and carrying that is required during the normal work activities of a commercial painter. Since claimant is not able to do the required lifting, standing, climbing and reaching that she performed as a commercial painter, she is not able to do her previous work.

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] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to do unskilled sedentary/light work. Claimant's vocational profile shows an individual approaching advanced age (55) with a GED education and a history of semi-skilled work as a painter. Based on this analysis, claimant is able to work as a carry-out clerk at a grocery store, as a ticket taking for a theatre, as a parking lot attendant, or as a greeter for [REDACTED].

In short, based on this analysis, the department correctly denied claimant's MA-P application due to her ability to perform Substantial Gainful Activity.

Claimant did not report any non-exertional (mental) impairments.

During the hearing, claimant testified that the major impediment to her return to work was back pain in combination with wrist pain and right shoulder pain.

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 summary, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her back pain, carpal tunnel pain and right shoulder pain. Claimant currently performs many activities of daily living, has an active social life, and is computer literate. This means that claimant is able to perform sedentary/light work.

Therefore, claimant does not qualify for MA-P/SDA benefits under Steps 5 of the sequential evaluation procedure, as presented 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/SDA disability requirements under PEM 260 and 261. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis procedure.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, **AFFIRMED.**

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Marianne Udow, Director
Department of Human Services

Date Signed: August 18, 2009

Date Mailed: August 18, 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

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