

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: 2007-22760
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 5, 2007
Ionia 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 Ionia on December 5, 2007. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED] from [REDACTED].

The department was respresented by Steve Speiser (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

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 the Record Close Date.

ISSUE

Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work continuous 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 (March 26, 2007) who was denied by SHRT (November 5, 2007) due to claimant's failure to submit sufficient medical evidence to establish a disability. SHRT requested a new physical examination. The claimant waived the right to obtain a new exam.

(2) Claimant's vocational factors are: age—64; education—High school diploma post high school education—took courses and became a certified computer operator (1977); work experience—foster parent for the [REDACTED], store manager for [REDACTED], collections manager, store manager for [REDACTED] store.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she was a foster parent in June 2006. Claimant has advanced training in computer operation.

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

- (a) Can't walk;
- (b) Can't stand;
- (c) Can't lift;
- (d) Status post heart attack (November 2006);
- (e) Status post triple bypass surgery (January 2007);
- (f) Chronic chest pain.

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

OBJECTIVE MEDICAL EVIDENCE (NOVEMBER 5, 2007):

Claimant is status post CABG x 3, 1/2007. The 2/2007 and 3/2007 follow-ups, claimant's condition was improving and she was doing well (pages 6, 31-32).

Claimant reported 8/1/2007 she was not able to work. No updated or additional medical records or testing (other than what was in the original 3/2007 file) were submitted for review.

ANALYSIS: Additional medical information, considering claimant's vocational profile, is needed for current functioning capacity.

(6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping (with pain), vacuuming (with pain), laundry and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair or shower seat.

(7) Claimant does not have a valid driver's license due to financial problems. Claimant is highly computer literate since she has been certified as a computer operator.

(8) The following medical records are persuasive:

(a) A March 22, 2007 Medical Examination Report (DHS-49) was reviewed. The physician provided the following current diagnoses:

- (1) Coronary artery disease;
- (2) Cerebral vascular disease.

The physician provided the following limitations:

Claimant is able to lift up to 20 pounds frequently. Claimant is able to stand and/or walk about 6 hours in an 8 hour day. Claimant is able to use her hands/arms normally. She is able to use her feet/legs normally.

(9) 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 show the following diagnoses: Coronary artery disease and cerebral vascular disease.

(10) Claimant's most prominent complaint is her chest pain.

(11) Claimant is receiving RSDI. She has not applied for SSI.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has not submitted sufficient medical evidence to establish her ability to work. The department has requested additional medical information.

LEGAL BASIS

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 his 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 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. Claimant's 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 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 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 the 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, she does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT found that claimant does not meet the severity and duration requirements because she did not submit persuasive evidence of a 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 foster parent for the [REDACTED]. Claimant's previous work as a foster parent may be defined as follows:

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b). 20 CFR 416.967(c).

The medical/vocational evidence of record shows that claimant has been successfully treated for heart dysfunction. Her ability to perform light work remains intact.

Claimant is able to return to her previous work as a foster parent for the Department of Human Services.

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.

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] [REDACTED] 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 carry-out clerk at a grocery store, as a ticket taker for a theatre, as a pizza delivery driver (after she renews her license), as a parking lot attendant, and as a greeter for [REDACTED]. Claimant is also able to work as a foster care parent for the department.

During the hearing, claimant testified that the major impediment to her return to work was her chest pain, secondary to her recent cardiac surgery. 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 chest pain secondary to her recent cardiac surgery. Claimant currently performs extensive activities of daily living, has an active social life, and has advanced training in computers. This means that claimant is able to perform sedentary/light work (SGA).

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 the claimant does not meet the MA-P disability requirements under PEM 260. Claimant is not disabled for MA-P purposes based on Step 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: 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 receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JWS/sd

cc:

