

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: 2007-29331
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 21, 2008
Calhoun 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 on May 21, 2008 in Battle Creek. Claimant personally appeared and testified.

Claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Brenda Loepke (FIM).

At claimant's request, the hearing record was left open for additional medical evidence and a second review by the State Hearing Review Team (SHRT). Claimant, on the record, waived the time limit on issuing this decision. Claimant's medical records were sent to SHRT on May 22, 2008. After a second SHRT denial, the Administrative Law Judge issued the 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 recipient and an MA-P/retro applicant (February 28, 2007) who was denied retro benefits by SHRT (November 6, 2007) due to claimant's failure to establish the required severity and duration. Claimant's application for MA-P was approved by SHRT on February 27, 2007. SHRT denied retro MA-P for November and December 2006 and for January 2007.

(2) Claimant's vocational factors are: age—56; education—8th grade; post-high school education—none; work experience—homemaker.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since February-March 2007 when she was hospitalized on two separate occasions at the [REDACTED] [REDACTED] for cardiac arrhythmia.

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

- (a) Shortness of breath;
- (b) Status post hospitalization for cardiac arrhythmia (in [REDACTED]);
- (c) Limited ability to stand;
- (d) Limited ability to lift;
- (e) Difficulty concentrating;
- (f) Hypertension;
- (g) Osteoarthritis;
- (h) Sleep apnea;
- (i) Depression;
- (j) GERD

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]:

Hospital records of [REDACTED] indicate claimant was treated for dysphagia.

ANALYSIS:

Claimant has been approved SSI benefits through Social Security Administration disability process as of 10/5/2007, with an SSI onset date of 5/1/2007. The claimant was approved based on vocational considerations. There is no indication of a disabling impairment. She was approved using Vocational Rule 202.01 as a guide. (In SSI claims, the onset is generally administratively established the first day of the month of application. Therefore, it is reasonable to find that Vocational Rule 202.01 also applies back to February 2007, when she was hospitalized for arrhythmia problems.

In this MA-P claim, claimant was having arrhythmia problems as of [REDACTED]. She turned 55 in 2/2007 at which time she then entered the “advanced age” category. This led to approval of benefits using Vocational Rule 202.01 as a guide. Prior to that time, given the RFCA (Residual Functional Capacity Assessment) that was assessed she would have been denied to do other work using Rule 202.10 as a guide. Therefore, retro MA-P cannot be approved in this case (for [REDACTED] and [REDACTED].)

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning (sometimes), mopping (sometimes), vacuuming (sometimes), laundry (needs help); grocery shopping.

(7) Claimant has a valid driver’s license and drives an automobile approximately 4 times a month. Claimant is not computer literate. Claimant does not use a cane, walker or wheelchair to ambulate. She does not use a shower stool or braces on her hands, legs or neck.

(8) The following medical records are persuasive:

(a) See the SHRT summary of medical evidence at paragraph 5, above.

- (b) An [REDACTED] Medical Examination Report (DHS-49) was reviewed.

The physician reports the following current diagnoses: gastroesophageal reflux, type II diabetes, hypertension, hyperlipidemia, hiatal hernia, depression, osteoarthritis and congestive heart failure and arrhythmias. The physician also reports mental limitations which include difficulty following medical directions and tracking various medical conditions.

The physician provided the following physical limitations, no lifting, able to stand/walk less than 2 hours; able to sit less than 6 hours, not able to do pushing/pulling.

(9) The objective medical evidence in the record shows that claimant has a history of depression/anxiety. In particular, claimant has difficulty following directions.

(10) The objective medical evidence in the record shows that claimant has several severe physical (exertional) impairments: gastroesophageal reflux disease, type II diabetes, hypertension, hyperlipidemia, hiatal hernia, depression, osteoarthritis, congestive heart failure and arrhythmias.

(10) Claimant recently applied for federal disability benefits. The Social Security Administration approved SSI benefits on October 5, 2007 with an onset date of May 1, 2007.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's basis for thinking she is entitled to retro-MA for November-December 2006 and January 2007 is summarized in the Hearing Request submitted by L&S:

Claimant suffers from diabetes mellitus, type II, hypertension, chronic recurrent cardiac arrhythmias, osteoarthritis, sleep apnea, depression and GERD. Claimant reports bilateral lower extremity weakness, weak grips, abdominal tenderness, chest pain and shortness of breath.

DEPARTMENT'S POSITION

The department approved claimant for MA-P effective February 2007, but denied claimant's request for retro benefits for November-December 2006 and January 2007.

The department approved claimant for MA-P based on the Social Security Administration's approval of SSI with an onset date of May 2007. The department considered claimant's request for MA-P retro. However, the medical information combined with the vocational factors directs a decision of not disabled prior to age 55, because Med-Voc Rule 202.10 which was used by the Social Security Administration would not be applicable because claimant was not yet 55.

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/SDA 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, or engaging in work of a type generally performed for pay. PRM Glossary, page 34.

The evidence of record shows that claimant is not currently performing SGA.

Therefore, claimant meets the Step 1 eligibility test.

STEP 2

SHRT found that claimant does not meet the severity and duration requirements for retro-MA for November-December 2006 and January 2007.

However, the Administrative Law Judge finds that claimant's current conditions (diabetes mellitus, type II, hypertension, chronic recurrent cardiac arrhythmia, osteoarthritis, sleep apnea, depression, GERD, bilateral lower extremity weakness, weak grips, abdominal tenderness, chest pain and shortness of breath did exist in a severe form during the months of November-December 2006 and January 2007.

The Administrative Law Judge thinks that the conditions which disabled claimant in May 2007 were clearly present during the requested retro months.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that she meets any of the Listings.

Therefore, claimant does not meet the Step 3 eligibility test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant has never worked outside the home. Claimant currently is able to do only a portion of her domestic chores.

Based on the medical evidence of record, including the evidence that claimant was hospitalized for cardiac arrhythmia twice in [REDACTED] (February and March) and based on the Social

Security Ruling that claimant was eligible for SSI, the Administrative Law Judge concludes that claimant is unable to do her previous work as a homemaker.

Therefore, claimant meets the Step 4 eligibility test.

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 Social Security Administration approved claimant for SSI benefits with an effective date of February 2007 based on Med-Voc Rule 202.10.

The issue before the Administrative Law Judge at this time is whether claimant should be approved for retro-MA for November and December 2006, as well as January 2007.

The Administrative Law Judge believes that the federal rules (20 CFR 404.1563 requires the Administrative Law Judge to assess whether claimant was disabled three months prior to the date Social Security approved her for SSI.

The following regulation is applicable here:

“We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in the determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case.”

Since claimant has established that her combination of impairments meets the SSI regulations for disability effective [REDACTED], the Administrative Law Judge concludes that claimant’s combination of impairments, as described above, plus her advanced age, three months

prior to turning 55, and her recent hospitalizations for cardiac arrhythmia, establish that claimant was in fact disabled for the retro months of November/December 2006 and January 2007.

Based on this analysis, claimant has established by competent, material and substantial evidence on the whole record that she was unable to perform any work during the months of November/December 2006 and January 2007 due to the combination of her impairments (exertional and non-exertional) as well as her advanced age.

Therefore, claimant does meet the MA-P disability standards for retro-MA at Step 5.

DECISION AND ORDER

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

Claimant did not have the Residual Functional Capacity (RFC) to perform substantial gainful work during the retro months of November/December 2006 and January 2007.

Accordingly, the department's denial of claimant's application for retro-MA-P is, hereby, REVERSED.

SO ORDERED.

/s/

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

Date Signed: February 26, 2009

Date Mailed: February 26, 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:

