

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: 2008-02897
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 12, 2008
Van Buren 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 Hartford on February 12, 2007. Claimant personally appeared and testified under oath.

The department was represented by Linda Geml (Service Supervisor) and Paula Pool (FIS).

The Administrative Law Judge appeared by telephone from Lansing.

SHRT requested additional medical evidence. Claimant requested additional time to submit the SHRT-requested evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on March 11, 2008. Claimant waived the time limit requirements so that her new medical evidence could be reviewed by SHRT.

After SHRT's 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 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 (July 11, 2007) who was denied by SHRT (January 4, 2008 and March 27, 2008) due to claimant's failure to submit adequate medical evidence. SHRT requested additional medical evidence prior to making a decision.

(2) Claimant's vocational factors are: age—44 ; education—high school diploma; post-high school education—received a certificate from the [REDACTED] on [REDACTED] [REDACTED]; work experience—gas station cashier, supervisor of patient care for an adult group home, manager of a pizza store.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since May 2006 when she was a gas station cashier.

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

- (a) Fibromyalgia;
- (b) Lupis;
- (c) Degenerative disc disease;
- (d) Knee dysfunction/bilateral;
- (e) Limited ability to stand;
- (f) Limited ability to sit;
- (g) Able to lift up to 5 pounds;
- (h) Can't use arms over her head;
- (i) Doctor issued off work award;
- (j) Poor vision;

- (k) Doctor says claimant's condition is permanent;
 - (l) Sleep dysfunction.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (JANUARY 4, 2008):

The lumbar spine MRI showed lower lumbar stenosis with small disc protrusion and possible impingement of the L5 nerve roots in the lateral recesses. No objective timely medical evidence was presented for review of current residual functional capacity.

ANALYSIS:

Current objective medical information is needed to document the severity of the mental and physical functional restrictions.

(6) Claimant lives with her ex-husband and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), light cleaning (sometimes), grocery shopping (sometimes). Claimant occasionally uses a cane or walker for ambulation. She occasionally uses an [REDACTED] electric cart at the grocery store. She also uses a shower stool.

(7) Claimant has a valid driver's license and drives an automobile approximately 4 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

- (a) An [REDACTED] [REDACTED] pain consultant narrative was reviewed:

The physician provided the following history:

Claimant is seen at the request of [REDACTED] for evaluation. Patient reports diffuse migratory body pain, neck pain that radiates into the shoulders and low back pain that radiates into the legs. She describes the pain as sharp, stabbing, and throbbing. She also indicates "it runs up and down my body." Weather changes, prolonged walking, prolonged sitting, and prolonged standing all increase the pain. Changing position and rest will decrease the pain.

However, the patient has difficulty falling asleep and staying asleep due to her discomfort. Nausea and chronic fatigue accompany the discomfort. Physical activity is quite limited due to the discomfort. The patient is very irritable and “snappy at people” with respect to interpersonal relationships. Emotionally, she is tearful, angry, and reports suicidal ideation but does not report any planning or intent or interest in follow through. Concentration is negatively impacted.

Historically, the patient indicates that she has had pain since a young child. She remembers her knees hurting as a youngster. She has had diffuse body pain for a number of years. All her discomforts began to escalate about 5 years ago. There was no precipitating event. Physical therapy made the pain worse. The patient has been on Neurontin, Flexeril, Sulindac, and Mobic, with limited to no benefit. She is currently on Lyrica, Restoril, Vanaflex, and Ultrim, with limited benefit. I advised her that from my perspective she has had reasonable trials of these types of medications. She has not had any interventional therapy. She also reports not having had a trial of Lidocaine infusion.

SOCIAL HISTORY:

Socially, the patient is divorced. She has one son and one daughter. She last worked in May of 2005, although her contact form/intake form says May of 2006. Activities of daily living and daily life are significantly limited. She denies alcoholic beverage use other than a glass of wine on Sundays. She reports 4 cigarettes a day. Smoking cessation is counseled. She reports marijuana use in 2004 but denies other street or recreational drug use since that time. I did advise the patient that if we did a random drug screen and she was positive for marijuana, we would need to go through counseling and she potentially would be discharged from the practice.

PAST MEDICAL HISTORY:

Positive for pain as outlined above, fibromyalgia syndrome, myocardial infarction, palpitations, angina, hypertension, arthritis, asthma, depression, tobacco product use, alcoholic beverage use, and morbid obesity.

IMPRESSIONS:

I believe this patient has pain on the basis of fibromyalgia syndrome, lumbar radiculitis, lumbar spine degenerative disc disease and lumbar spinal stenosis.

(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 evidence of depression by history. However, there is no clinical evidence from a PhD psychologist or a psychiatrist. There is no clinical evidence in the record that claimant has ever been evaluated by a psychiatrist or PhD psychologist. Claimant did not submit a DHS-49D or DHS-49E in order to establish a residual mental functional capacity.

(10) The probative medical evidence, standing alone, does not establish an acute physical (exertional) condition expected to prevent claimant from performing all customary work functions. The medical records do show recent diagnoses of fibromyalgia syndrome, lumbar radiculitis, lumbar spine degenerative disc disease and lumbar spinal stenosis. One of her physicians states that she is completely unable to work and that her conditions are permanent. However, this opinion is not based on clinical evidence.

(11) Claimant's most prominent complaint is her back, leg and knee pain.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Her application is currently pending.

(13) Claimant is morbidly obese; she weighs 300 pounds.

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

SHRT thinks that claimant's medical evidence is inadequate to make a careful determination of claimant's eligibility for MA-P/SDA. SHRT requested that claimant provide a complete report of an independent examination by a consulting physician in narrative format.

The department denied claimant's SDA application because claimant's medical evidence is inconclusive.

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).

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 260/261. "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.

Claimant meets the Step 1 eligibility test.

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 result in death, it must have lasted or be expected to last for a continuous period of at least 12 month from the date of application. 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 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 her medical evidence is inconclusive.

Claimant does not meet the Step 2 eligibility test.

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 a Listing.

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 previously worked as a gas station cashier.

Claimant's work as a gas station cashier 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).

The medical /vocational evidence of record show that claimant has reduced ability to lift, stand and sit. It is noted that claimant is precluded from heavy lifting, based on doctor's comments.

Claimant is not able to return to her previous work as a cashier and stocker for a gas station because she is unable to do the required standing, sitting, walking, and in particular lifting.

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 [REDACTED], published by the [REDACTED].
[REDACTED] at 20 CFR 416.967.

The medical/vocational 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 ticker 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 back, knee and leg pain, secondary to her spinal dysfunction. Evidence of pain, alone, is insufficient to establish disability for MA-P/SDA 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 back, knee and leg pain, secondary to her spinal dysfunction. Claimant currently performs several activities of daily living, has an active social life, drives an automobile four times a month and is computer literate. This means claimant is able to perform sedentary/light work (SGA).

In addition, the evidence shows that claimant's physician has advised her to quit smoking. However, claimant testified that she continues to smoke against medical advice. Claimant is barred from disability based on her failure to follow her medical treatment plan.

Based on this analysis, the department correctly denied claimant's MA-P/SDA 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/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, as described above.

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 Ismael Ahmed, Director
Department of Human Services

Date Signed: August 24, 2009

Date Mailed: August 25, 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:

