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: 2008-10296
Issue No: 2009
Case No: [redacted]
Load No: [redacted]
Hearing Date:
January 27, 2009
Alpena 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 Alpena on January 27, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [redacted].

The department was represented by Kathy MacArthur (ES).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on March 31, 2009. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. After SHRT's second disability 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/Retro applicant (June 25, 2007) who was denied by SHRT (March 18, 2008) based on claimant's failure to submit relevant medical evidence in support of her application. SHRT requested a complete physical examination and lab work in order to determine claimant's eligibility.

(2) Claimant's vocational factors are: age--50; education—high school diploma, post-high school education--none; work experience—worked part-time cleaning a factory, worked as an assistant manager at a skin tanning company, worked 18 years as manager of a medical billing company.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since January 2007 when she worked as a part-time factory cleaner.

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

(a) Gout;
(b) Arthritis;
(c) Heart dysfunction;
(d) Weakness and fatigue;
(e) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (MARCH 18, 2008)

> Medical records indicate claimant has a heart condition with a history of a heart attack as well as angioplasty and stenting of the proximal LAD for a high grade lesion (pages 133-146).

Claimant has also been found to be anemic and has needed transfusion on occasion. Hematocrit levels have run around 30 or below 30 in 3/2005, 5/2006, 6/2006, 4/2007, and 5/2007. Bilirubin levels have been within normal limits for this same time period. Albumin levels are within normal limits with the exception of 4/2007 and 5/2007, which were 2.9 and 2.8. Creatine levels were within normal limits (page 24, 45, 38, 36, 31, 281).

Medical Examination Report of 6/27/2007 reported claimant has a history of cirrhosis, anemia, malnutrition and current diagnoses of hypertension, cad/coronary artery disease, post myocardial infarction and nicotine dependency. She appeared depressed, catatonic, really ill with muscle atrophy and weakness and had flat affect (page 14).

ANALYSIS:

As of the report of 6/2007, claimant appeared quite limited. She does have a history of anemia with some transfusions (not at a frequency required for Listing 7.02(a). She has a history of heart attack and coronary artery disease. Angioplasty and stenting was successful. Although cirrhosis has been reported, the biopsy is not in the file and the bilirubin levels have been within normal limits, as have the creatinine levels, while albumin level and liver enzyme (ALT and AST) levels have fluctuated.

The evidence in the file is quite dated, and therefore, current detailed information is needed. Her claim was denied in 8/2007 by MRT with anticipation that her condition would improve.

SUPPLEMENTAL MEDICAL EVIDENCE (APRIL 29, 2009)

See DHS-282 dated 3/18/08 for the prior medical summary.

NEW INFORMATION: Laboratory testing revealed the claimant's bilirubin was within normal limits in 2/09 and her hematocrit (HCT) was 33 (page 296). HCT was low at 30.8 in 1/09 (page 341) and her bilirubin was normal at 0.41 (page 340). HCT was normal at 36 in 12/08 (page 344) and total bilirubin was within normal limits at 0.58 (page 343).

On exam in 2/09, the claimant's mental status was normal. She was 62" and 127 pounds. The chest revealed increased A-P diameter with prolongation of the expiratory phase. Breath sounds were clear. The heart revealed regular rate and rhythm without enlargement. There was a normal S1 and S2. The liver had nodularity and there was a 3-inch liver enlargement without splenomegaly, ascites or masses. There was tenderness over the

> right upper quadrant and in the periumbilical area. Grip strength was intact and dexterity was unimpaired (page 298). Motor strength and tone were normal. Sensory was intact. Reflexes were intact. She walked with a small stepped gait without the use of an assistive device (page 300).
>
> The claimant had been admitted in 3/08 due to noncardiac chest pain (page 314).

* * *

(6) Claimant lives with her boyfriend and performs the following Activities of Daily Living (ADLs): dressing (needs help), bathing, cooking (needs help), dish washing (slowly), cleaning (needs help), mopping (needs help), vacuuming (needs help), laundry (needs help), and shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces. Claimant received inpatient hospital services in 2008 for coronary artery disease and replacement of a stent. Claimant has not been hospitalized in 2009.

(7) Claimant has valid driver's license and drives an automobile on a daily basis. Claimant is not computer literate.

(8) The following medical records are persuasive:

> (a) A June 27, 2007 Medical Examination Report (DHS-49) was reviewed.
>
> The family physician provided the following diagnoses: hypertension, coronary artery disease and anemia.
>
> The family physician states that claimant is able to lift 10 pounds frequently and up to 25 pounds occasionally. She is able to stand/walk less than 2 hours in an 8 hour day. She is able to use her hands and arms normally and she is able to use her feet and legs normally.
>
> The family physician provided the following mental limitations: sustained concentration; following simple directions; social interaction.
>
> The family physician does not state that claimant is totally unable to work.

* * *

(9) The probative psychological evidence does not establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. The only support for claimant's allegation that she has a severe mental impairment was provided by her family physician in June 2007 when he completed a Medical Examination Report. The family physician simply states that claimant has limited concentration, limited ability to follow simple directions and limited ability to engage in social interaction. However, the physician did not provide a Mental Status Examination or any clinical evidence to support his opinion. In short, the medical record does not corroborate claimant's allegation of severe depression. Taking the psychological reports as a whole, the record does not establish that claimant is totally unable to work based on her mental impairments.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's family physician states that claimant has coronary artery disease, hypertension, pancreatitis and cirrhosis of the liver. Claimant also has anemia. The Administrative Law Judge does not find persuasive evidence to establish a severe physical impairment. Also, the medical record is full of contradictory evidence. The Administrative Law Judge concludes that there is no reliable information to establish a severe physical impairment that totally precludes all work activity at this time.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant position is summarized by [redacted] in its Hearing Request, as follows:

"Claimant suffers from liver cirrhosis, due to long standing alcohol abuse, anemia, pancreatitis, hypertension, coronary artery disease and depression."

DEPARTMENT'S POSITION

The department thinks that claimant's medical evidence is insufficient to make a fair and reliable assessment of claimant's mental and physical impairments.

In order to make a detailed analysis of claimant's current medical condition, SHRT requested a complete physical examination and lab work.

The department denied MA-P/SDA due to lack of the required severity and duration.

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 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 her mental/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 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, or otherwise performing Substantial Gainful Activity (SGA) are not disabled regardless of medical condition, age, education or work experience. 20 CFR 416.920(b).

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

Therefore, claimant meets the Step 1 disability test.

STEP 2

The issue at Step 2 is whether claimant has impairments which meet the SSI definition of severity/duration.

Claimant must establish that she has an impairment which is expected to result in death, has existed for 12 months, and totally prevents all current work activities. 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).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant alleges disability based on Listings 5.05.

SHRT evaluated claimant's eligibility based on the Listings and decided that claimant does not meet the Listings.

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

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a cleaner at a factory. She has also worked as an assistant manager at a tanning salon and as a manager of a medical billing agency.

The medical evidence of record establishes that claimant has coronary artery disease, pancreatitis and hypertension. Based on these diagnoses, claimant would not be able to perform the heavy work involved in cleaning a factory.

Therefore, claimant does not meet the Step 4 disability test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/psychological evidence in the record, that her combined impairments meet the department's definition of disability for MA-P purposes.

First, claimant alleges disability based on depression. There is little psychological evidence in the record to establish the existence of severe depression. The only evidence in support of claimant's position was provided by her family physician in a June 2007 report in which he simply states the conclusion that claimant has limited ability to maintain sustained concentration, limited ability to follow simple directions, and limited ability to engage in social interaction. The psychological evidence of record is simply not adequate to establish a severe mental impairment.

The medical evidence of record does not establish that claimant's back condition is so severe that he is totally unable to do any work.

Second, claimant alleges disability based on her physical impairments which are hypertension, coronary artery disease, post myocardial infarction, muscle atrophy and weakness. Claimant's physical impairments do preclude claimant performing work which requires heavy lifting. However, her physical impairments do not preclude all employment.

Finally, claimant testified that a major impediment to her return to work was weakness and fatigue as well as arthritic pain. Unfortunately, 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.

Claimant currently performs two other activities of daily living, has an active social life.

The Administrative Law Judge concludes that claimant's testimony about her pain is profound and 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 a combination of her depression and her physical impairments. Claimant currently performs many activities of daily living, has an active social life with her boyfriend, drives an automobile on a daily basis, and was capable of representing herself at the hearing in a cogent and understandable manner.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple, unskilled sedentary work (SGA). In this capacity, she is physically able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [redacted], and as a telemarking representative.

Based on this analysis, the department correctly denied claimant's MA-P application, based on Step 5 of the sequential analysis, as presented above.

Since claimant qualified for MA-P benefits based on Step 5, as noted above, the Administrative Law Judge does not reach the issue of substance (alcohol) abuse as it relates to claimant's disability.

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 disability requirements under PEM 260.

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 6, 2009

Date Mailed: August 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/sd

cc: [redacted]