

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: 2008-16512
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 9, 2008
Lapeer 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 Lapeer on October 9, 2008. Claimant personally appeared and testified under oath.

Claimant was represented at the hearing by [REDACTED], from [REDACTED].

The department was represented by Ann Chaption (Program Supervisor) and Pat Bentley (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on October 13, 2008, the record was closed at that time. Claimant waived the timeliness requirement so 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) or 90 days (SDA)?

(2) 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/Retro/SDA applicant (October 29, 2007) who was denied by SHRT (May 21, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests Retro-MA for July, August and September 2007.

(2) Claimant's vocational factors are: age--31; education—high school diploma, post-high school education—Vocational/technical courses (Child Care); work experience—cashier/stocker at [REDACTED], child care aide.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004, when she was a cashier/stocker at a [REDACTED].

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

- (a) Nerve damage;
- (b) Left leg/ankle dysfunction;
- (c) Left leg/ankle RSD (Reflex Syndrome Dystrophy) (2004);
- (d) Status post motor vehicle accident/back injury (2007)
- (e) Light pain;
- (f) Asthma/uses inhalers.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 21, 2008)

Claimant was treated inpatient from 7/4/2007 to 7/12/2007 for left ear cellulites. At discharge, 7/12/2007, the condition had improved. On physical examination, claimant was alert and oriented. Claimant's work history is comparable to her cognitive abilities. The heart was functioning with regular rate and rhythm. Blood pressure was 105/66. Lungs were clear. Extremities were unremarkable and there were no neurological deficits (page 14).

On examination, 7/31/2007, the use of a cane was reported. However, it was observed that claimant sat Indian style on the exam table. The assessed restrictions from 11/31/2007 were not objectively documented.

ANALYSIS: A severe impairment was not clinically documented.

* * *

(6) Claimant lives with her mother and performs the following Activities of Daily Living (ADLs): dressing, bathing (needs help), grocery shopping (needs help; uses an Amigo cart). Claimant uses a cane on a daily basis. She does not use a walker, a wheelchair or a shower stool. She does not wear braces on her back, neck, arms or legs. She does wear a left ankle brace on a daily basis.

(7) Claimant has a valid driver's license and drives an automobile approximately once a month. Claimant is not computer literate. Claimant attended special education classes during high school.

(8) The following medical/psychological records are persuasive:

(a) A July 9, 2008 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: lumbar back pain, left leg sensory neuropathy.

The physician stated that claimant was able to lift 20 pounds frequently and up to 25 pounds occasionally. She is able to stand and/or walk less than 2 hours in an 8 hour day. She is able to use her hands/arms for simple grasping, reaching and fine manipulating. She is unable to use her hands/arms for pushing/pulling. She is able to use her right foot/leg to operate foot controls. Claimant has no mental limitations.

- (b) An April 2, 2008 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnoses: Reflex syndrome dystrophy/lower limb; traumatic arthritis/ankle/foot (left).

The physician provided the following limitations: Claimant is able to lift 10 pounds occasionally. She is not able to do walking/standing greater than 10 minutes per hour to go to restroom in and out. She does not require and assistive devices.

The physician states that claimant is able to use both hands/arms for simple grasping, reaching, reaching, pushing/pulling and fine manipulating. She is not able to operate foot controls with either foot.

The physician reports no mental impairments.

* * *

- (9) The probative medical 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. Claimant did not report any mental impairments as the basis for disability.

SHRT provided the following summary of claimant's condition:

Claimant is a 30 year-old female who has a 12th grade education which was obtained in special education classes per client. She has a work history of working as a childcare provider. She has the following health issues: severe leg pain and swelling, left ear otitis; is receiving trigger-point injections for neck pain. EMG indicates sensory neuropathy in the left leg and ankle due to motor vehicle accident trauma in 2006. Morbid obesity (BMI 33) and learning disabled.

* * *

However, there are no psychiatric/psychological reports in the record. Also, claimant did not provide a DHS-49D or a DHS-49E to show her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical records provide the following diagnoses: RSD lower limb (left), traumatic arthritis (left ankle/foot). A recent July 9, 2008 Medical Examination Report (DHS-49) reports left foot sensory neuropathy-possible RSD. The physician states that claimant can frequently lift 10 pounds and occasionally lift up to 25 pounds. She is able to stand/walk less than 2 hours in an 8 hour day. She is able to use her hands/arms for simple grasping, reaching and fine manipulating. She is able to use feet/leg controls with her right foot.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] in the Hearing Request as follows:

Claimant is a 30 year-old female who has a 12th grade education which was obtained in special education classes per client. She has a work history of working as a childcare provider. She has the following health issues: severe leg pain and swelling, left ear otitis; receiving trigger-point injections for neck pain, sensory neuropathy in the left leg/ankle (per EMG); morbid obesity (BMI 33) and learning disability.

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform normal work activities.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security Listing.

The department thinks that claimant retains the residual functional capacity to perform basic (unskilled) work activities.

The department denied MA-P/SDA based on the lack of 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).

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).

To determine how a severe mental impairment affects claimant's ability to work, the following regulations must be considered.

(a) **Activities of Daily Living.**

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) **Social Functions.**

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) **Concentration, persistence or pace.**

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

(d) **Sufficient Evidence.**

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to

symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

(e) **Chronic Mental Impairments.**

...Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. For instance, if you have chronic organic, psychotic, and affective disorders you may commonly have your life structured in such a way as to minimize your stress and reduce your signs and symptoms.... 20 CFR 404, Subpart P, App. 1, 12.00(E).

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, 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 medical/vocational evidence of record shows 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.

Unless an impairment is existed 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).

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

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. The following Listings were considered: 12.04, 12.05, 12.06.

Claimant does not meet the standard of these Listings.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a cashier/stocker at a [REDACTED].

While the medical evidence does indicate that claimant has some left leg pain, this does not preclude her from returning to her previous work as a cashier/stocker at the [REDACTED].

Although the evidence indicates that claimant has difficulty walking, she is able to use a wheelchair or an Amigo to move from place to place.

Since claimant is able to return to her previous work as a cashier/stocker, she 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 mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant is not disabled based on a mental impairment. Claimant did not allege a mental impairment at the hearing. There is no clinical evidence that would support a finding that claimant has a severe mental impairment.

Second, claimant alleges disability based on left leg dysfunction, left leg pain, back injury and asthma. The medical evidence of record does not document asthma as a severe impairment. The back dysfunction and left leg nerve damage do limit claimant's ability to walk. However, claimant is able to use a wheelchair or an Amigo on those days when it is difficult to walk. Finally, the physicians who completed the 2 Medical Examination Reports did not state that claimant was totally unable to do any work.

During the hearing, claimant testified that a major impediment to her return to work was her left leg dysfunction and radiating pain. 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 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 her left leg and back dysfunction in combination with her radiating pain.

Claimant is able to move about. She is able to dress and bath herself, go grocery shopping and drive an automobile.

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 able to work as a ticket taker at a theatre, as a parking lot attendant and as a cashier at a grocery store.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application, based on Step 5 of the sequential analysis, 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 260/261.

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 14, 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 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:

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