

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: 2008-16796
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2008
Kalamazoo 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 Kalamazoo on June 10, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Marjorie Barber (FIS).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on June 11, 2008. After SHRT's second non-disability determination, the Administrative Law Judge issued the following Decision and Order.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work 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 on a sustained basis 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 (January 31, 2007) who was denied by SHRT (May 22, 2008), due to claimant's ability to perform unskilled medium work. SHRT relied on Med-Voc Rule 203.21. Claimant requests retro-MA for October, November and December 2007.

(2) Claimant's vocational factors are: age—50; education—high school diploma; post-high school education—none; work experience—cashier for [REDACTED], cashier for [REDACTED], dietician for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she was a cashier for [REDACTED] in [REDACTED].

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

- (a) Bilateral vision dysfunction;
- (b) Diabetes;
- (c) Chronic fatigue.

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

OBJECTIVE MEDICAL EVIDENCE [REDACTED]:

On [REDACTED], claimant was admitted after she drank some alcohol and she could not be aroused. Her urine analysis was negative, except for red blood cells. Impression was hypoglycemia (page 30).

Claimant was admitted [REDACTED] due to mental status change, secondary to hypoglycemia. A CT scan of the head showed volume loss in multiple old infarcts. Her mental status

improved throughout her hospitalization. She refused her insulin regimen (page 138).

On [REDACTED], claimant presented to the hospital due to right shoulder pain. She was found to have a blood sugar of 597 (page 106). She was admitted for diabetic ketoacidosis and right clavicular fracture (page 107).

Claimant was admitted again [REDACTED] due to diabetic ketoacidosis (page 61). She reported that she had been out of her medications for some time due to hardship (page 72).

ANALYSIS:

While claimant has been hospitalized multiple times from [REDACTED] to [REDACTED], the [REDACTED] admissions were not actual episodes of ketoacidosis. Claimant runs out of her medications frequently, due to being homeless and due to hardship. Her physical exams have been basically unremarkable.

(6) Claimant performs the following Activities of Daily Living (ADLs):
dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping.

(7) Claimant does not have a valid driver's license and does not drive an automobile. She is not computer literate. She does not use a cane, walker, wheelchair, shower stool or any braces on her arms or legs.

(8) The following medical records are persuasive:

(a) A [REDACTED] [REDACTED] discharge summary was reviewed. The physician provided the following discharge diagnoses:

- (1) Diabetic ketoacidosis;
- (2) Type II diabetes mellitus with uncontrolled blood sugar;
- (3) Hypopituitarism;
- (4) Nicotine addiction;

- (5) Hypertension.

The discharge summary notes the following:

Claimant received smoking cessation education and counseling during hospitalization.

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing customary work functions for the required period of time. There are no PhD psychologist/psychiatrist reports. Claimant did not submit a DHS-49D or a DHS-49E to show her mental residual functional capacity. (10)

The probative medical evidence of record does not establish an acute (exertional) impairment expected to prevent claimant from performing customary work functions. A hospital reported diagnoses of diabetic ketoacidosis;

- (1) Type II diabetes mellitus with uncontrolled blood sugar;
- (2) Hypopituitarism;
- (3) Nicotine addiction;
- (4) Hypertension.

(11) Claimant's most prominent complaint is that her eyesight is poor and it is difficult to control her diabetes.

(12) Claimant recently applied for federal disability benefits with the Social Security Administration. Claimant's application was denied; she filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

██████████ for diabetic ketoacidosis, hypertension, diabetes mellitus, hypoglycemia and hyperpituitarism. She was seen again ██████████ for diabetic ketoacidosis with mental status changes secondary to a severe hypoglycemia. ██████████ she was readmitted.

DEPARTMENT'S POSITION

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

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

The department denied claimant's MA-P disability based on claimant's vocational profile [closely approaching advanced age at 50, 12th grade education and history of working as a cashier].

The department relied on Med-Voc Rule 203.21 as a guide.

The department denied SDA based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activity for 90 days or more.

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

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

Therefore, claimant does meet 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.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months or result in death.

SHRT found that claimant meets the severity and duration requirements.

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. Claimant alleges that she meets Listing 9.08B.

The Administrative Law Judge was not able to find any medical evidence which comments specifically on Listing 9.08B.

Since there is no medical evidence to establish eligibility based on 9.08B, the Administrative Law Judge concludes that claimant has not met her burden of proof at this step.

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 cashier for a grocery store. In this capacity, claimant was required to read the prices on the items which she checked out, and also make change correctly. Claimant did not submit any medical evidence to establish the severity of her vision impairment, the Administrative Law Judge concludes that claimant can return to her previous work as a cashier at

[REDACTED]

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 416.926.

The medical evidence of record establishes that claimant is able to perform unskilled sedentary work. She is able to work as a parking lot attendant and as a greeter for [REDACTED].

The medical evidence of record establishes that claimant is able to perform light work based on wide range of activities of daily living which claimant performs.

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 260/261.

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: February 27, 2009

Date Mailed: March 2, 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:

[REDACTED]