

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: 2008-17993
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 7, 2008
Kent 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 Grand Rapids on October 7, 2008. Claimant personally appeared and testified under oath.

The department was represented by [REDACTED]

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

- (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 (February 4, 2008) who was denied by SHRT (May 21, 2008) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests Retro MA for November and December 2007 as well as January 2008.

(2) Claimant vocational factors are: [REDACTED]
[REDACTED]
[REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since April 2007 when she worked for [REDACTED].

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

- (a) [REDACTED]
- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED]

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

OBJECTIVE MEDICAL EVIDENCE (May 21, 2008)

In 12/2006, claimant presented to the hospital with abdominal pain. A CT of the abdomen revealed gallstones and a stricture of the common bile duct. She underwent a laproscopic procedure to remove the gallbladder, and also had a stent inserted into the bile duct to open the stricture. She had some complications during surgery, but her condition eventually improved and she was discharged.

In 8/2007, she presented to the ER with dental pain and swelling of the jaw and neck. A few months later, in 10/2007, she was back in the ER with continued neck swelling. A CT of the neck found a mass. A biopsy/excision of the mass revealed a non-cancerous inflammation of the left submandibular gland.

ANALYSIS: Claimant's condition is expected to improve post-operatively (neck mass). Her gallbladder condition is currently non-severe.

(6) Claimant is living with her [REDACTED], and performs the following Activities of Daily Living (ADLs): [REDACTED]. Claimant was recently hospitalized for surgery on her common [REDACTED]. She does not use a cane, a walker or a wheelchair. She does use a shower stool. She does not a brace on her back, neck, arms or legs.

(7) Claimant has a valid driver's license but has not driven an automobile in the last 30 days because she is on post surgery pain medications. Claimant is not computer literate.

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

(a) See the summary of medical records provided by SHRT at paragraph #5, above.

(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 allege a mental impairment as the basis of her disability. Claimant did not provide any psychiatric/psychological reports in the record.

(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 reports do show the following diagnosis: abdominal pain,

gallstones and stricture of the common bile duct. Claimant did have a laproscopic procedure to remove her gallbladder in early 2007.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application on three separate occasions. Claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/Retro based on the impairments listed in paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform basic work activities.

The department thinks that claimant's impairments (abdominal pain, gallstones and stricture of the common bile duct) 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 normal work activities.

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 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. 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 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.

Unless an impairment is expected 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).

If claimant does not have an impairment or a combination of impairments which profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria.

The Administrative Law Judge concludes that claimant's physical impairments have been successfully treated and do not currently meet the severity/duration requirement.

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 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 an assembly line worker packing boxes. This was light work.

Although claimant testified that her doctor currently has her on a work restriction, she does perform many activities of daily living at home.

When claimant is fully recuperated from her [REDACTED] she will be able to return to her previous work as an assembly line packer.

Since claimant is able to return to her previous work, 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 purposes.

First, claimant does not allege disability based on a mental impairment.

Second, claimant [REDACTED]

Although claimant recently had [REDACTED], it appears that she is recovering satisfactorily, and will be able to return to work in less than 12 months.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her [REDACTED]. Claimant currently performs many activities of daily living and has an active social life with her mother and father-in law. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled light work (SGA). In this capacity, she is able to work as a [REDACTED], as a [REDACTED], and as a [REDACTED].

Based on this analysis, the department correctly denied claimant's MA-P 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 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: January 5, 2009

Date Mailed: January 5, 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 receipt date of the rehearing decision.

JWS/vmc

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Administrative Hearings (2)