

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: 2008-18769
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2008
Clare 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 Harrison on September 9, 2008. Claimant personally appeared and testified under oath.

The department was represented by Laura List (FIS).

The Administrative Law Judge appeared by telephone from Lansing.

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/SDA applicant (December 11, 2007) who was denied by SHRT (May 29, 2008) due to claimant's ability to perform her past relevant work.

(2) Claimant's vocational factors are: age--49; education--high school diploma, post-high school education--associate's degree in accounting; work experience--bus driver for [REDACTED], office manager, and bookkeeper.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2004 when she worked as a bus driver for [REDACTED].

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

- (a) Back pain;
- (b) Inability to walk long distances;
- (c) Inability to sit for long periods;
- (d) Inability to stoop;
- (e) Difficulty concentrating;
- (f) Forgetful;
- (g) Currently sees a psychiatrist;
- (h) Has difficulty getting out of a chair.

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

OBJECTIVE MEDICAL EVIDENCE (May 28, 2008)

Claimant was hospitalized in 12/2007 due to chest pain. EKG testing was normal. A stress test was also normal. Her lungs clear and her exam was unremarkable (pages 151-155). A 2/2008 exam noted MRI of the lumbar spine that showed degenerative changes. She had limited range of motion of the lumbar spine with no neurological deficits and a mildly elevated blood pressure (page 146).

ANALYSIS:

Claimant's alleged impairments do not meet or equal Listing 1.02, 1.04 or 4.02. Based on a preponderance of the objective medical evidence, and in accordance with 20 CFR 416.967(b), claimant's physical residual functional capacity is assessed at the light exertional level.

* * *

(6) Claimant has a live-in partner, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing (sometimes), light cleaning, vacuuming (sometimes), laundry and grocery shopping (needs help). Claimant was hospitalized in July 2008 for kidney dysfunction. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear a brace on her neck, arms or legs.

(7) Claimant has a valid driver's license and drives an automobile approximately 15 times a month. Claimant is computer literate.

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

(a) A [REDACTED] discharge summary was reviewed.

The physician provided the following discharge diagnoses:

- (1) Chest pain, non-cardiac, atypical;
- (2) Chronic Obstructive Pulmonary Disease;
- (3) Mild hypertension;
- (4) Osteoarthritis.

The physician provided the following history:

Claimant is a 48-year-old white female with a history of mild hypertension, severe osteoarthritis and bad knees with difficulty walking, who developed an onset of chest pain, which she described as pressure and aching. She had some shortness of breath. She just did not feel well. She was quite nervous and anxious. She stated that a couple of weeks prior to admission she had developed a lot of leg swelling. She had seen the orthopedic surgeon who told her something was wrong with her heart because of the leg swelling and she

states the swelling has gone down, but has not had any problems.

* * *

NOTE: No work limitations were reported.

* * *

(b) An [REDACTED] consultation was reviewed.

The physiatrist provided the following history:

As you are aware, claimant is a 48-year-old female who comes in with complaints of generalized pain, more so in the lower back, bilateral knees, and bilateral shoulders. She has tried numerous narcotic analgesics including OxyContin, Percocet and Vicodin. She uses topical Lidoderm patches. She has a history of sleep apnea and uses a CPAP. She has had a MRI of the lower back, which revealed diffuse degenerative disc disease. She rates her pain levels around a 6/10 on a scale with 0 being no pain and 10 being the worst pain. She tried physical therapy which actually made her symptoms worse. She also complains of severe sleep disturbance. She has pain and fatigue even with normal functional activities. She has poor endurance with her ADL's.

* * *

The physiatrist provided the following impression:

- (1) Fibromyalgia;
- (2) Bilateral shoulder impingement;
- (3) Mechanical low back pain, most likely secondary to degenerative disc disease.

* * *

(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 testified that she has a hard time concentrating and is forgetful. There is no clinical confirmation of this. 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. A recent physiatry report provides the following impressions:

(1) Fibromyalgia; (2) bilateral shoulder impingement; (3) mechanical low back pain, most likely secondary to degenerative disc disease. A recent discharge summary shows the following diagnoses: chest pain, non-cardiac, atypical; (2) chronic obstructive pulmonary disease; (3) mild hypertension; and (4) osteoarthritis. The medical record does not report any functional limitations.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant did not appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the Residual Functional Capacity (RFC) to perform unskilled light work. Claimant's past work was as a bus driver. Therefore, claimant retains the capacity to perform her past relevant sedentary work as a bus driver.

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, he 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 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 combination of impairments which profoundly limit her physical/mental ability to do basic work activities, she does not meet the Step 2 criteria.

Claimant's meets the Step 2 severity and duration 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 the Listings. Claimant is not eligible based on Listing 1.02, 1.03, or 4.02.

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 school bus driver for [REDACTED]. Claimant's work as a school bus driver was light work.

However, claimant's school bus work requires that she be able to climb up and down the school bus stairs and be able to get in and out of her seat to assist children when necessary.

Because of the osteoarthritis in claimant's knees, she is not able to return to her previous work as a school bus driver.

Claimant meets 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 alleges disability based on difficulty concentrating and being absentminded. There is no psychiatric/psychological evidence in this record to establish that claimant's mental status is a severe impairment and totally prevents her from doing any work. Finally, claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on back dysfunction and osteoarthritis. The medical evidence of record does not establish that these conditions impose severe functional limitations on claimant's ability to work.

During the hearing, claimant testified that a major impediment to her return to work was her back and leg pain secondary to her osteoarthritis. Unfortunately, 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 dysfunction and osteoarthritis. Claimant currently performs many activities of daily living and has an active social life with her live-in partner. Claimant drives an automobile approximately 15 times a month and is computer literate.

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, claimant is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

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: January 8, 2010

Date Mailed: January 8, 2010

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.

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