

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: 2008-20669
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 17, 2008
Muskegon 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 on September 17, 2008. Claimant personally appeared and testified under oath.

The department was represented by Donata Clanton (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was received on September 17, 2008 and sent the State Hearing Review Team (SHRT) on that date. 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) 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 (March 12, 2008) who was denied by SHRT (June 19, 2008) due to claimant's ability to perform unskilled, light work. SHRT relied on Med-Voc Rule 202.17 as a guide. Claimant requests retro-MA for January, February and March 2008.

(2) Claimant's vocational factors are: age--49; education—8th grade, post-high school education--none; work experience—home help aide and machine operator.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she worked as a home help aide.

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

- (a) Arthritis of both knees;
- (b) Receiving injections for her knee pain;
- (c) Back dysfunction;
- (d) Asthma;
- (e) Thyroid dysfunction;
- (f) Chest pain;
- (g) Shortness of breath;
- (h) Unable to do housework.

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

OBJECTIVE MEDICAL EVIDENCE(JUNE 19, 2008)

Claimant had a right upper lobe bronchioalveolar carcinoma with right upper low lobectomy in 6/2006 (pages 222-224).

In 5/2007, claimant had a needle biopsy of a left breast nodule which revealed a benign tubular adenoma (Packet 2, pages 212 and 213). Claimant also had excision and biopsy of a right breast mass in 1/1998 (Packet 2, pages 302-304).

Claimant was admitted in 3/2008 due to right lung pneumonia and methicillin-resistant staphylococcus aureus (MRSA) in sputum. Claimant improved during her hospitalization (pages 180-181). On exam there was no evidence of cellulites or inflammatory arthritis (page 172).

On 3/5/2008, her gait was normal (page 101). On 3/18/2008, claimant had decreased range of motion and movements were painful. Gait was slow and cautious and stiff (page 104).

On follow-up 3/27/2008, claimant was feeling much better and she wanted to stop her oxygen. Her oximetry was 100% on 2 and off oxygen for about 20 minutes it was still 100%. Breath sounds showed mildly diminished air flow in the right compared to the left, but this was due to her lobectomy. There were no vocal wheezes, rhonchi, crackles or friction rubs. There was a mild right hemidiaphragm elevation, as expected. Extremities were without clubbing, cyanosis or edema. She was given a script to discharge oxygen therapy (page 240).

ANALYSIS:

Claimant has had a history of left breast nodule biopsy in 5/2007 and excision and biopsy of a right breast mass in 1/1998. However, there is no evidence of breast cancer. Claimant does have a history of lung cancer with a right upper lobectomy in 6/2006. There is no evidence of recurrence or strep. Claimant was admitted in 3/2008 for pneumonia and MRSA which improved with treatment. She had some discomfort and decreased range of motion on 3/5/2008 but other exams showed no evidence of inflammatory arthritis and her gait was normal about 2 weeks earlier. She was doing well 2/27/2008.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing (sometimes), light cleaning (needs help). Claimant was hospitalized in 2008 for pneumonia and a staph infection. Claimant does not use a cane, a walker, a wheelchair, shower stool and does not wear any braces.

- (7) Claimant has a valid driver's license but does not drive on a regular basis.

Claimant is not computer literate.

- (8) The following medical records are persuasive:

- (a) An [REDACTED] was reviewed. The D.O. provided the following history:

Claimant reports "I'm not doing very well." She was able to go to the wedding in [REDACTED], but states it was very hard, to drive down there. The last bathroom stop she didn't even get out because she was so stiff and couldn't breathe. Mood isn't much better, 4 out of 10, 10 being very happy. No suicidal or homicidal thoughts or psychotic problems. She has no money to pay for her rent and it is like \$500. Money is a stressor. She just had bilateral injections in her knees, and ended up even making this appointment today. She had a 2:30 and made the appointment at 3:00. After getting back from [REDACTED], she also had a bout of bronchitis. I suspect she was staying with folks and they were smoking. She has a history of lung cancer. Sleep is still a problem, middle insomnia, multiple awakenings. I am suggesting that she has a sleep study.

* * *

DIAGNOSIS:

Axis I—Major Depressive Disorder, recurrent, severe without psychotic features; generalized anxiety disorder. Axis V/GAF 50.

- (b) An April 22, 2008 psychiatric evaluation was reviewed.

The D.O. provided the following history: Claimant reports that she has a lot of environmental stressors. Amongst them, she is no longer able to work; she had work for a home health aide, but because of her medical problems is no longer able to do that. She last worked in 2007. She has had lung cancer, a herniated disc, asthma, and recently had pneumonia and MERSA.

The psychiatrist provided the following DSM diagnoses:

Axis I—Major Depression; Generalized Anxiety Disorder. Axis /GAF: 50.

(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. The D.O. psychiatric evaluation in the record provided the following diagnosis: Major Depressive Disorder, recurrent, severe without psychotic features and Generalized Anxiety Disorder. Axis V/GAF 50. The psychiatrist did not report any functional limitations. Also, claimant did not provide 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 show that claimant has a history of lung cancer, breast cancer, arthritis and asthma. However, the medical reports do not show any functional limitations at this time.

(11) Claimant has recently 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 thinks she is entitled to MA-P/Retro/SDA benefits 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.

Based on claimant's vocational profile [younger individual (age 49), 8th grade education and a history of unskilled work]; the denied MA-P based on Med-Voc Rule 202.17.

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

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. 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 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).

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

However, claimant has not established, at this step, that she is eligible for MA-P/SDA benefits because she is totally unable to work.

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 Listing for lung dysfunction (3.00), or the Listing for osteoarthritis of the knees (1.01, 1.02, 1.03, 1.04, and 1.05) or the Listing for asthma.

In short, 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 home health aide for elderly people.

Claimant's work as a home health aide would be medium work.

Because claimant has difficulty breathing (a portion of her lung was been removed during cancer treatment), and bilateral osteoarthritis of the knees, she is not able to perform the medium level work required of a home health aide.

Since claimant is unable to return to her previous work, she 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 her mental impairments: depression, anxiety and insomnia. Claimant also has a GAF of 50. The psychiatrist who is treating claimant did not state that any of claimant's mental impairments were so severe that they would preclude claimant from performing substantial gainful activity.

In short, claimant's mental impairments do not preclude her from performing Substantial Gainful Activity.

Second, claimant alleges disability based on her physical impairments: bilateral arthritis of the knees with pain, back dysfunction with pain, asthma, and status post lung cancer.

The medical evidence of record shows that claimant is being treated for her bilateral arthritis with injections. There is no evidence that her back dysfunction totally precludes substantial gainful activity. Claimant is currently receiving medical treatment for her asthma and her lung impairment.

Claimant's physical impairments, taken individually and collectively do not constitute a severe impairment that totally precludes all work activity.

During the hearing, claimant testified that a major impediment to her return to work was the knee pain and back pain, secondary to her knee and back dysfunction. 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 the combination of her mental and physical impairments. Claimant currently performs basic Activities of Daily Living, and has an active social life with her children and grandchildren. 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 (SGA). In this capacity, she is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED].

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 13, 2009

Date Mailed: August 14, 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:

