

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: 2008-24599
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 15, 2008
Washtenaw 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 Ypsilanti on October 15, 2008. Claimant personally appeared and testified under oath.

The department was represented by Annette Wilde (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on October 15, 2008. Claimant waived the timeliness requirements so that her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge made the final 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/SDA applicant (January 28, 2008) who was denied by SHRT (July 23, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements.

(2) Claimant's vocational factors are: age--44; education--high school diploma; post-high school education--none; work experience--prep cook for the [REDACTED] for 11 years.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she was a prep cook for [REDACTED].

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

- (a) Difficulty using hands;
- (b) Lower back dysfunction/with pain;
- (c) Arthritis;
- (d) Thoracic outlet syndrome;
- (e) Bilateral hand numbness;
- (f) Chronic pulmonary insufficiency;
- (g) Depression;
- (h) Raynaud's Syndrome;
- (i) COPD;
- (j) Digestive problems.

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

OBJECTIVE MEDICAL EVIDENCE (July 23, 2008)

The department denied MA-P/SDA based on claimant's ability to perform normal work activities. The department determined that claimant's impairments were non-severe under 20 CFR 416.920.

(6) Claimant lives with her two sons, ages 16 and 22. She performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (needs help), dish washing (sometimes), light cleaning, vacuuming (sometimes), and laundry. Claimant uses a cane approximately 4 times a month. She does not use a walker or a wheelchair. She uses a bench in the shower. Claimant wears bilateral hand braces on a daily basis.

(7) Claimant has a valid driver's license and drives an automobile approximately twice a month. Claimant is not computer literate.

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

- (a) An August 21, 2008 Medical Needs Form (FIA-54A) was reviewed.

The physician provided the following diagnoses: Chronic low back pain, COPD, and CTS.

The physician states that claimant is not able to work at her usual occupation and is unable to work at any occupation but does not specify the duration. The reason for his no work opinion is 'paresthesia of both hands.'

- (b) An [REDACTED] narrative report was reviewed.

The physician provided the following history:

This 44-year-old woman last worked in March 2006, when she fell at work injuring her hands and lower back. She has had low back pain since. She states she has had tests and was told she has disc disease. She has had no surgery for this. She received cortisone injections which help only temporarily. She is due to have another one May 13, 2008 at the [REDACTED]. At times, the pain is radiated through both lower legs. She has numbness in her legs on and off.

She was told she had thoracic outlet syndrome on the right about 20 years ago, and had surgery for this in January 2006. When she fell, she fell resting on her hands and arms and thinks she may have injured the area where the thoracic surgery was done. She has aching in the upper right chest since. She also has had numbness of both hands since she

fell. This is worse on the right. She is right handed. She also has some aching in her feet.

The physical examination shows the following (in pertinent part):

There was some tenderness in the right lower quadrant. There was no joint swelling, redness, heat. There was normal range of motion of the cervical spine, shoulders, wrists, fingers. There was some restriction of motion of the lower back. Straight leg raising was 90 degrees. The Tinel's sign was negative, bilaterally.

The physician provided the following conclusion:

Claimant is status post surgery for thoracic outlet syndrome on the right. She has low back pain. She has possible bilateral carpal tunnel syndrome. **She is able to work with restrictions of no bending or lifting over 15 pounds. She should not have any repetitive use of her hands.**

(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 depression. There is no medical evidence of depression in this record. There are no psychiatric/psychological reports in the record. 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 show that claimant has paresthesia in both hands, chronic low back pain, COPD, status post surgery for thoracic outlet syndrome, and possible bilateral carpal tunnel syndrome. A physician of record stated that claimant's work restrictions are: no bending or lifting over 15 pounds and no repetitive use of her hands.

(11) Claimant has not applied for federal disability benefits with the Social Security Administration.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has normal residual functional capacity.

The department thinks that claimant is not disabled due to her failure to establish an impairment which meets the department's severity and duration requirements for MA-P/SDA.

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).

The 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.

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

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant's application was evaluated using Listings 1.02 (back pain), 1.04 (arthritis), 3.00 (respiratory system), 3.02 (chronic pulmonary insufficiency), and 12.04 (affective disorders). She does not meet any of these 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 a prep cook for [REDACTED]. Claimant's work as a prep cook was light work.

The medical source opinion (see Medical Needs form (FIA-54A), dated August 21, 2008), states that claimant is totally unable to work.

However, the narrative evaluation, dated April 24, 2008, states that claimant can work under the following restrictions: no bending or lifting over 15 pounds and no repetitive use of her hands.

Since working as a prep cook involves lifting more than 15 pounds and the repetitive use of her hands, claimant is unable to return to her work as a prep cook.

Therefore, 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 depression. However, there is no psychological/psychiatric evidence in the record to establish that diagnoses.

Second, claimant alleges disability based on bilateral hand numbness, COPD, disc disease and sporadic numbness in her legs.

The consultative narrative medical examination (April 24, 2008) states that claimant can work, with the following restrictions: no bending or lifting over 15 pounds, and no repetitive use of her hands.

During the hearing, claimant testified that a major impediment to her return to work was her back dysfunction (low back pain), and radiating pain in both legs. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that the 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, based on the contradictory medical evidence in the record, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her depression, low back pain, disc disease, radiating pain in both legs and numbness of both hands. Claimant currently performs many Activities of Daily Living, has an active social life with her sons who live with her and drives 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 for a theater, as a parking lot attendant, or 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: January 25, 2010

Date Mailed: January 25, 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 receipt date of the rehearing decision.

JWS/kgw

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