

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: 2008-24932
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 9, 2008
Lapeer 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 October 9, 2008. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED] from [REDACTED].

The department was represented by Pat Bentley-Finn and Ann Chapaton (Services Supervisor).

Claimant requested additional time to submit new medical evidence. Claimant requested a State paid psychological exam. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. In October 2008, MRT approved for MA-P/SDA retroactively to March 2008.

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 (January 28, 2008) who was denied by SHRT (July 21, 2008) based on claimant's residual functional capacity to perform at least light work. Claimant requests retro MA-P for December 2007.

(2) Claimant's vocational factors are: age--54; education—high school diploma, post-high school education—one semester at a junior college; work experience—DHS Home Health Aide, cashier/stocker/shift manager for grocery store, accounts receivable clerk, telemarketer.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she worked as a DHS Home Health Aide.

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

- (a) Status post heart attacks (x2);
- (b) Unable to handle stress;
- (c) Status post cardiac surgery (December 2007);
- (d) Bipolar disorder.

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

OBJECTIVE MEDICAL EVIDENCE (JULY 21, 2009)

Claimant is able to perform past unskilled sedentary work as a telemarketer under 20 CFR 416.920(e).

SHRT thinks that claimant retains the residual functional capacity to perform at least unskilled light work. Since claimant's past work was unskilled sedentary (telemarketer), she retains the capacity to return to her past relevant work as a telemarketer.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or a shower stool. Claimant does not wear braces on her neck, her back, her legs or her knees. Claimant was hospitalized in December 2007 for treatment of a myocardial infarction. She also received an angioplasty. Claimant was hospitalized in 2008 for chest pain.

(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) A March 18, 2008 Medical Examination Report (DHS-49) was reviewed. The cardiologist provided the following diagnoses: Status post myocardial infarction with stent, CAP, chest pain, hyperlipidemia, hypertension, possible peripheral neuropathy and history of bipolar disorder.

The cardiologist states that she is able to lift 10 pounds frequently, able to stand and/or walk 2 hours in an 8 hour day. Claimant is able to use her hands and arms normally. She is able to use her feet and legs normally. The cardiologist reported no mental limitations.

- (b) A [REDACTED] report was reviewed. The cardiologist provided the following diagnoses:

- (1) Status post myocardial infarction x2, following intervention on 2 separate occasions. Negative stress profusion scan;
- (2) Hyperlipidemia;
- (3) Central hypertension;
- (4) Questionable peripheral neuropathy;
- (5) History of bipolar disorder.

The cardiologist did not report any work limitations.

- (c) A [REDACTED] letter was reviewed. The rehabilitation counselor stated that claimant was not qualified for job training assistance with [REDACTED] [REDACTED] [REDACTED] "because of the

significant various employments presented by her disability.”

* * *

(9) In October 2008, MRT approved claimant for MA-P/SDA retroactively to March 2008. Claimant requests retro benefits back to December 2007.

(10) MRT did not grant MA-P retroactively to March 2008, as requested by claimant.

CONCLUSIONS OF LAW

CLAIMANT’S POSITION

Claimant’s position is summarized by [REDACTED] in the Hearing Request, in pertinent part:

Claimant is a 53-year-old female who has a 12th grade education and a work history of home health provider and cashier. She has the following health issues: Chest pain, history of 2 heart attacks, stent and PTCA, anxiety, bipolar, fatigue, problems with verbal comprehension and pain in left arm with numbness and tingling per claimant.

* * *

DEPARTMENT’S POSITION

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

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

The department thinks that claimant is able to return to her past relevant unskilled sedentary work as a telemarketer.

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).

To determine to what degree a mental impairment limits claimant's ability to work, the following regulations must be considered.

(a) **Activities of Daily Living.**

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) **Social Functioning.**

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding

appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) **Concentration, persistence or pace.**

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

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 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 Step 2.

In October 2008, MRT determined that claimant met the MA-P disability standards retroactively to March 2008.

The question before the undersigned Administrative Law Judge is whether claimant meets the disability requirements for December 2007.

MRT's determination of disability is based on a combination of impairments which were documented by the medical evidence in the record.

The question before the undersigned Administrative Law Judge is whether the combination of impairments reported in medical and testimonial evidence of record constitutes a severe impairment for MA-P in December 2007.

The Administrative Law Judge concludes that MRT's position (that claimant is not eligible for December 2007) is not logically supportable, and is not supported by the great weight of the evidence of the record.

The evidence of record shows that claimant did not acquire her combination of impairments instantaneously (based on a fall or an accident). Claimant's cardiac impairments

emerged gradually over many months. Claimant testified that her heart dysfunction prevented her from working most of 2007.

Based on the medical evidence of record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant has met her burden of proof. Claimant has established that her combination of impairments were present in a severe and disabling manner in December 2007.

Therefore, claimant has established MA-P eligibility for December 2007 based on her combination of impairments.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the MA-P/SDA disability requirements for December 2007 under PEM 260/261.

Accordingly, the department's denial of claimant's MA-P application for retro benefits for December 2007 is, hereby, REVERSED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 19, 2009

Date Mailed: August 20, 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.

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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

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