

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: 2008-9014
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 1, 2008
Iosco 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 East Tawas on April 1, 2008. Claimant personally appeared and testified under oath.

The department was represented by Joanne Moeller (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to the State Hearing Review Team (SHRT) on May 1, 2008. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the ALJ 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/retro/SDA applicant (September 4, 2007) who was denied by SHRT (February 27, 2008 and September 11, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for June, July and August 2007.

(2) Claimant's vocational factors are: age--56; education--high school diploma, post-high school education--course work leading to certification as an EKG technician, and as a phlebotomist; work experience--receptionist; self-employed helper at a restaurant, taking orders and cleaning, home help-care aide.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she was a receptionist in 2007.

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

- (a) Unable to walk without falling;
- (b) Unable to bend without pain;
- (c) Right knee dysfunction;
- (d) Unable to sit without pain;
- (e) Osteoarthritis;
- (f) Poor memory;
- (g) Poor concentration.

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

OBJECTIVE MEDICAL EVIDENCE (February 27, 2008)

On 8/8/2007, claimant was admitted with complaints of severe fatigue and cough (page 26). Claimant was found to have clinical pneumonia (page 27). On exam in the ER, claimant had normal heart sounds. Extremities were non-tender. She had normal range

of motion. She was oriented x3, mood and affect were normal. There were no motor or sensory deficits (page 59).

An MRI of the right hip, dated 9/19/2007, shows changes of mild osteoarthritis, but was otherwise unremarkable (page 36).

ANALYSIS: Claimant was admitted in 8/2007 for pneumonia which was expected to improve with treatment. Her exam at the time showed no neurological abnormalities and there was normal range of motion of the extremities. Mood and affect were normal. An MRI of the right hip showed only mild osteoarthritis.

* * *

(6) Claimant lives with her boyfriend and performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing, cooking (sometimes), dish washing, light cleaning (sometimes), laundry (needs help), and grocery shopping (needs help). Claimant occasionally uses a walker. She did not report using a cane, wheelchair or shower seat. She did not report any braces on her arms or legs.

(7) Claimant has valid driver's license but does not currently drive an automobile. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) An October 25, 2007 family physician report contains the following diagnoses: osteoarthritis with pain; dysthymia; GERD, and comorbid conditions.

* * *

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The report by the family physician stated that claimant has dysthymia. Claimant was recently evaluated by a Ph.D. psychologist. Claimant did not submit a DHS-49D or 49E to establish her mental residual functional capacity.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions. The medical records do show that claimant has the following conditions: osteoarthritis with pain, dysthymia, GERD, and comorbid conditions.

(11) Claimant's primary complaints are knee pain and body pain which arises when she sits and walks.

(12) Claimant has applied for federal disability benefits with the Social Security Administration. He claim is currently pending.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant also requests retro MA for June, July and August 2007.

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC) and is able to perform a wide range of normal work activities.

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

The department denied claimant's applications based on lack of duration/severity.

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 and 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.

Claimant meets the Step 1 eligibility 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 from the date of application. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy both the gainful work and the severity/duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit her physical and/or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT correctly found that claimant does not meet the severity and duration requirements.

Claimant does not meet the Step 2 eligibility 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 a Listing.

Therefore, 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 receptionist.

There is no medical evidence of a physical or mental impairment that would preclude claimant from returning to her work as a receptionist.

Therefore, claimant does not meet the Step 4 eligibility test.

STEP 5

The issue at Step 5 is whether claimant has the Residual Functional Capacity (RFC) to do other work.

For purposes of this analysis, we classify jobs as sedentary, light, medium and heavy. These terms are defined in the [REDACTED], published by the [REDACTED] at 20 CFR 416.967.

The medical/vocational evidence of record, taken as a whole, establishes that claimant is able to perform normal work activities. Claimant is able to work as a ticket taker for a theatre, as a parking lot attendant, and as a greeter for [REDACTED]. Also, claimant is able to return to her previous work as a receptionist.

During the hearing, claimant testified that a major impediment to her return to work was body pain and knee pain secondary to osteoarthritis. 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 osteoarthritis, pain and mental limitations. Claimant currently performs many

activities of daily living, has a valid driver's license and is computer literate. Claimant has an active social life with her boyfriend. This means that claimant is able to perform normal work activities.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application.

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 and 261. Claimant is not disabled for MA-P/SDA purposes based on Steps 3, 4 and 5 of the sequential analysis, as described above.

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: February 23, 2010

Date Mailed: February 23, 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.

2008-9014/JWS

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/cv

cc:

