

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: 2008-14994
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2008
Wexford 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 July 1, 2008 in Cadillac. Claimant personally appeared and testified under oath.

The department was represented by Janet Vyse (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on July 14, 2008.

Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, 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 activity, **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 activity, **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 (July 2, 2007) who was denied by SHRT (May 1, 2008) due to claimant's ability to perform medium work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age--46; education--high school diploma; post high school education--GED; work experience--service desk clerk for [REDACTED], preschool bus driver, school aide.

(3) Claimant has not performed substantial gainful activity since November 2007 when she worked as a service desk clerk for [REDACTED] markets.

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

- (a) Unable to stand for long periods;
- (b) Unable to sit for long periods;
- (c) Right leg neuropathy;
- (d) Pinched nerve;
- (e) Status post 3 laminectomies (most recent 2007);
- (f) Depression;
- (g) Sleep dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (May 1, 2008)

An MRI of the lumbar spine, dated 1/2007, showed asymmetric bulging annulus fibrosis to the left at L3-4 (page 23), progressive narrowing of the post operative L4-5 interspace with degenerative changes, status post left L4-5 laminectomy with asymmetric bulging annulus fibrosis to the left at L4-5 level, and persistent bilateral L4-5 neural foraminal narrowing (page 24). On exam,

dated 10/2007, claimant was 61.5 inches tall and 200 pounds. Breath sounds were clear. The heart revealed regular rate and rhythm without enlargement. There was no evidence of joint laxity, crepitation or effusions. Grip strength was intact. Dexterity was unimpaired. She had difficulty doing orthopedic maneuvers due to the weakness in the right foot. Range of Motion (ROM) of the joints was full. She actually had full ROM of the dorsolumbar spine (page 6). She had 3/5 power with eversion of the right ankle. She had sensory loss over the anterior lateral aspect of her right foot. Reflexes were intact and symmetrical. She walked with a moderate right-sided limp without the use of an assistive device (page 7).

X-rays, dated 10/2007, of the lumbar spine showed fusion of the L4-S1 segments and laminectomies at L4 and L5 (page 8).

ANALYSIS: Claimant has had laminectomies at L4 and L5. She has effusion of the L4-S1 segments. Her exam was within normal limits, except for the right foot which revealed sensory loss and decreased power with eversion of the right ankle. She would be able to ambulate without assistance, but she did have a limp. Claimant would be able to do light work.

(6) Claimant lives with her husband and her 20-year-old son and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), shopping (needs help). Claimant does not use a cane, walker or wheelchair. She does use a shower stool occasionally. She does not wear a brace on her neck, arms or legs.

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

(8) The following medical records are persuasive:

(a) See the SHRT summary of medical evidence at paragraph #5, above.

(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. There are no psychiatric/psychological reports in the

record. Claimant did not provide a DHS-49D or DHS-49E to show her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute physical (exertional) impairment expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show that claimant has had 3 back surgeries and has a sensory loss over the anterior lateral aspect of her right foot. Claimant walks with a moderate right-sided limp, without the use of a cane.

(11) Claimant has applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant filed a timely hearing request.

(12) On May 22, 2008, the local Medical Review Team approved MA-P benefits for claimant back to November 2007.

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 the Residual Functional Capacity (RFC) to perform light unskilled work.

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 MA-P application based on claimant's vocational profile [younger individual (age 46), with a high school education and a history of unskilled work]. Using this profile, the department denied MA-P based on Med-Voc Rule 202.20.

The department denied SDA benefits, based on PEM 261, because the nature and severity of claimant's impairments do not preclude a wide range of unskilled work for 90 days or more.

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 and 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 did attempt to return to work at [REDACTED] in November 2007, but she was unsuccessful.

Therefore, 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. 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 disability criteria. SHRT found that claimant meets the severity and duration requirements.

Claimant meets 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 the Listings.

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 service desk clerk for [REDACTED]. Claimant's work as a service desk clerk is sedentary work. There is no medical evidence in this record that would preclude claimant from returning to her previous job as a service desk clerk for [REDACTED].

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.

Claimant has the burden of proof to show by the medical 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 a mental impairment (depression).

A careful review of the medical evidence of record shows that claimant does have a slight mental impairment. However the evidence of a mental impairment does not show that claimant's impairment profoundly prevents her from doing all work. There are no recent psychiatric or psychological reports in this record. Finally, claimant did not submit a DHS-49D or a DHS-49E to establish exactly what her mental residual functional capacity is. The Administrative Law Judge concludes the claimant did not meet her burden of proof to show a totally disabling mental impairment.

Second, claimant thinks she is disabled based on her physical impairments (status post back surgery 3x, right foot weakness, sensory loss over the anterior lateral aspect of her right foot). The medical evidence of record does not establish that claimant's physical impairments totally preclude all work. While it is true that claimant has lifting and standing limitations, the medical evidence of record does not show a physical impairment so severe that claimant is not able to perform sedentary work. To the contrary, the medical/vocational evidence shows that claimant is able to perform sedentary work. This would include employment as a ticket taker for a theatre, as a parking lot attendant, or as a greeter for [REDACTED]. In addition, claimant, based on this medical record, is able to return to her work at [REDACTED] as a service desk clerk.

Finally, during the hearing, claimant testified that a major impediment to her return to work is her overall body pain, in combination with numbness in her right foot. 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 mental impairments, her physical impairments and her body pain and right-sided paralysis. Claimant currently performs several activities of daily living, has an active social life and is computer literate. Based on the entire medical record, as well as claimant's testimony at the hearing, claimant is able to perform sedentary work (SGA).

The department correctly denied claimant's MA-P/SDA application based on Step 5 of the sequential analysis. Also, claimant is not disabled under Med-Voc Rule 202.20.

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 31, 2009

Date Mailed: August 31, 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 receipt date of the rehearing decision.

JWS/vmc

cc:

