

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: 2008-15325  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 1, 2008  
Macomb 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 Warren. Claimant personally appeared and testified under oath.

The department was represented by Larry Christ (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on August 1, 2008. Claimant waived the timeliness requirements so that the new medical evidence requested by SHRT 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 (March 23, 2007) who was denied by SHRT (May 2, 2008) due to insufficient medical evidence.

(2) SHRT requested a new internal medicine evaluation and a new psychological evaluation in order to accurately determine claimant's eligibility for the programs requested.

(3) Claimant's vocational factors are: age—53; education—high school diploma; post high school education—none; work experience—clerical work at the [REDACTED], secretary for [REDACTED] and secretary for [REDACTED].

(4) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she was a clerical worker.

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

- (a) Short-term memory loss;
- (b) Unable to use her right side;
- (c) Migraine headaches;
- (d) Fatigue;
- (e) Body pain;
- (f) Sleep dysfunction;
- (g) Irritable bowel syndrome;
- (h) Balance dysfunction;

- (i) Leg dysfunction;
  - (j) Has shakes in head and arms;
  - (k) Loses feelings in arms and legs;
  - (l) Uses cane because right leg is weak;
  - (m) Not steady on her feet;
  - (n) Right side “falls;”
  - (o) Bugs under her skin;
  - (p) Depression.
- (5) SHRT evaluated claimant’s medical evidence as follows:

**OBJECTIVE MEDICAL EVIDENCE (May 2, 2008)**

On exam on 8/2007 showed claimant was 60.5 inches and 161 pounds. Her blood pressure was 150/68. Heart exam revealed regular rhythm with a systolic ejection murmur in the left sternal border, Grade 2/6. There was no gallop. The claimant had rhonci, which was worse in the right lung and at the base of the left lower lung field. Percussion of the lungs was resonant (page 7). Pulses were absent in both lower extremities, pedal pulses could not be felt. She did complain of calf pain when she walks around 100 feet. She has numerous trigger points in the back and lumbosacral area and buttocks with palpation. Right handgrip was weak, most probably because of CVA (cardiovascular accident). She could not do tiptoe walking, heel walking or tandem gait because she lost her balance. Flexion of the knees on both sides was painless. Deep tendon reflexes were more brisk on the right side. Toes were down going. Finger to the nose exam on the right side was associated with intention tremor. She has loss of sensation on the right side of the body (page 8). Pulmonary function studies (PFS) in 8/2007 were noted to be normal (page 25).

A DHS-49 form, dated 4/2007, showed claimant had a current diagnosis of depression, fibromyalgia, osteoarthritis, atypical migraine, hypertension and possible history of CVA. Her exam was noted to be within normal limits, except for depression (page 37). The doctor indicated she could never lift any weight and could only stand/walk less than two hours in an eight-hour day (page 38).

**ANALYSIS:**

The information in the file does not actually document a CVA. However, claimant has balance problems and some weakness in the right hand. Additional updated medical information would be helpful in assessing claimant's current functional level.

\* \* \*

(6) Claimant lives with her sister and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, and dishwashing (sometimes) and laundry (sometimes). Claimant uses a cane on a daily basis. She does not use a walker, wheelchair, or shower stool. She does not wear braces on her neck, arms, or legs.

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

(8) The following medical records are persuasive: See the SHRT summary of medical evidence at Paragraph #5, above.

(9) The probative medical evidence does not establish an acute mental (nonexertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The psychiatric report dated July 22, 2008 provided the following diagnoses:

Axis I: Somato form pain disorder & nicotine dependence.

Axis IV: GAF-64 (some mild symptoms)

(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 department obtained an updated internal medicine evaluation which provided the following diagnoses:

- (a) Osteoarthritis of the lumbar spine & left knee joint;
- (b) Old case of cerebrovascular accident;
- (c) Irritable bowel syndrome by history;
- (d) Depression.

(11) Claimant has applied for federal disability benefits with the Social Security Administration. Her Social Security application is pending.

(12) Claimant continues to smoke, against medical advice (██████).

#### CONCLUSIONS OF LAW

##### **CLAIMANT'S POSITION**

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

##### **DEPARTMENT'S POSITION**

The department thinks that claimant has failed to submit adequate medical evidence in order to determine her eligibility for MA-P/SDA.

The department requested a new internist evaluation and a new psychological evaluation.

The requested exams were provided to SHRT—reviewed by SHRT.

##### **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 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.

Therefore, claimant meets the Step 1 eligibility test.

**STEP #2**

The issue at Step 2 is whether the 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 and prevent all work activities. 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.

Since the severity and duration requirement is a *de minimus* requirement, 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 clerical aide for [REDACTED]. Claimant's work as a clerical assistant is sedentary work.

The medical evidence of record does preclude sedentary work. Therefore, claimant is able to return to her previous work as a clerical aide.

Therefore, claimant does not meet 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 evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges that she is unable to work due to poor balance, leg dysfunction and shaking in her head and arms.

The medical evidence of record does not establish that claimant's exertional impairments are so profound that claimant is totally unable to do any work.

Second, claimant states that she is unable to work due to depression arising out of her medical condition and her pain.

The medical evidence of record, including the most recent, State of Michigan psychiatric exam, do not clearly establish that claimant is totally unable to work based solely on her mental impairment.

Third, at the hearing, claimant testified that a major impediment to her return to work was her fatigue, body pain, sleep dysfunction, etc. 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, that 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 combination of impairments. Claimant currently performs several activities of daily living, has an active social life and is computer literate. The medical record, taken as a whole, in combination with claimant's testimony at the hearing, shows that 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, 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: June 22, 2009

Date Mailed: June 23, 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 receipt 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/tg

cc:

