

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: 2008-16514
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2008
Ingham 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, an in-person hearing was held in Lansing on June 17, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Ellen Arman (lead worker).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) for reconsideration on July 17, 2008.

Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the ALJ issued the following hearing decision.

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 (June 29, 2007) who was denied by SHRT (March 17, 2008) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20, as a guide. Claimant requests retro benefits for March, April and May 2007.
- (2) Claimant's vocational factors are: age--47; education--high school diploma, post-high school education--none; work experience--cafeteria attendant at [REDACTED], janitor and clerical aide.
- (3) Claimant has not performed Substantial Gainful Activity (SGA) since September 2005 when she worked as a cafeteria line attendant at [REDACTED].
- (4) Claimant has the following unable-to-work complaints:
 - (a) Left rotator cuff dysfunction;
 - (b) Herniated discs;
 - (c) Arthritis/body pain/fibromyalgia;
 - (d) Depression.
- (5) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (May 23, 2008)

Claimant reports depression secondary to financial and medical problems. The 11/2007 medical status examination was normal. Daily activities are performed, independently.

At the 10/2007 physical examination, there was decreased range of motion and tenderness in the left upper extremity and lumbar spine. Gait was without an assistive device. Heel and toe gait was done. Deep tendon reflexes were present and equal. The abdomen was soft with no rebound. The heart was functioning with regular rate and rhythm. Blood pressure was 118/76. Lung were clear.

ANALYSIS: Back and shoulder pain was reported. Left overhead motion was decreased. No assistive device was needed for ambulation. No problems with heart or lungs were reported. The mental status exam was normal. Daily activities are performed independently. It is assessed that claimant retains the functional capacity to perform work of at least a light unskilled level.

* * *

- (6) Claimant lives with her son, 3 grandchildren, her daughter-in-law and a cousin.

She performs the following Activities of Daily Living (ADLs): needs help dressing and bathing, cooking (sometimes), dish washing (sometimes), and grocery shopping (needs help). Claimant was hospitalized at [REDACTED] in [REDACTED] for treatment of fibromyalgia and chest pains.

Claimant does not use a cane, a wheelchair, a shower stool, or braces. She does occasionally use a walker. Claimant walks around her house on a regular basis.

- (7) Claimant does not have a valid driver's license and does not drive an automobile.

Claimant's computer literacy is unknown.

- (8) The following medical records are persuasive:

- (a) A November 27, 2007 psychological evaluation was reviewed.

The psychological provided the following background: Claimant is a 47-year-old woman referred by the department for a psychological evaluation. * * *

Claimant indicated she currently is unable to work because she is in severe, chronic pain. She has multiple medical problems. In addition, she fell down a flight of stairs six years ago causing severe injuries to her back, shoulder and neck. Claimant stated that she has severe arthritis, high blood pressure, an ulcer, a thyroid condition, an irregular heartbeat, and muscle spasms. In the past she has had a hysterectomy, an ectopic pregnancy, a bowel resection, and surgery for fibroid tumors. * * * Claimant stated that until the onset of her multiple medical problems she was active, always worked, cared for her children, and was reasonably happy. She believes that her severe depression set in about 3 years ago. 'Before that I was working and taking care of myself and then my health got bad and I lost everything.' Claimant also indicated that since she lost all of her money, she had to leave her house of 26 years. She expressed great sadness that her children and relatives have not provided help to her.

* * *

Claimant stated that she has no history of drug or alcohol abuse. She has no military history and no criminal history.

Claimant stated she has never been psychiatrically hospitalized and has never been involved in outpatient medical treatment.

Claimant indicated that her most recent employment was at [REDACTED] for 4 ½ years. She worked there from 2001 to 2005. She worked as a line attendant in food services. She had to leave that job because of her health and her limited functional capacities. She stated that for years she did not work while she was raising her 2 children.

* * *

The Ph.D. psychologist provided the following DSM diagnoses:

Axis I--Mood disorder, with severe depression, secondary to multiple medical problems;

Axis V/GAF--53.

The Ph.D. psychiatrist suggested that claimant consult with a pain clinic and/or outpatient psychological treatment. He also recommended that claimant consult with a psychiatrist

regarding the possible use of anti-depressant medication to ease her current depression.

- (b) An [REDACTED] evaluation was reviewed.

The physician provided the following background.

* * *

Claimant indicates that she was having problems with both neck and back and left shoulder pain roughly 6 years ago. She relates this to having an episode where she fell down the stairs, which has increased her pain. The pain today is primarily in the left paracervical and left shoulder area. She indicates within this year she has had an MRI of her neck, left shoulder, and lower back. She advises she has been told that she has a left rotator cuff tear. She is under the care of [REDACTED] at [REDACTED]. Claimant advises she has episodic numbness and tingling in the left upper extremity. She has not had any EMG studies. She has no bowel or bladder problems and she has no saddle anesthesia. She advises that she is seeing [REDACTED] on [REDACTED]. Since the MRIs have been done relatively recently, she is going to expedite the next step in her diagnostic/treatment process. She has not undergone any physical therapy. * * * The patient is depressed. She advises that she did not have these issues relative to depression. She is crying throughout the history portion of the exam. She denies any suicidal or psychotic ideation. She is taking both Zoloft during the day and Trazodone at [REDACTED]. She is not seeing a mental health therapist, and believes this is related to chronic pain issues.

* * *

The physician provided the following assessment:

- (1) History of chronic neck, back, and left shoulder pain. Claimant reports that she has a diagnosis of a torn left rotator cuff;
- (2) Claimant has depression, some of it reactive, but claimant may also have some underlying panic disorder given her explanation regarding fears about driving and going out alone;
- (3) Hypertension, which is well controlled.

(4) History of fibroid tumors, history of ectopic pregnancy, and some type of bowel issues, all of which have been addressed surgically at this juncture.

(5) Significant social stressors.

* * *

(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. The Ph.D. psychologist provided the following DSM diagnosis: Axis I--Mood disorder, with severe depression, secondary to multiple medical problems; Axis V/GAF--53 (moderate). The psychologist's report, in combination with the medical records and claimant's testimony do not establish an acute mental condition that would totally preclude Substantial Gainful Activity (SGA).

(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 consulting physician reported the following: History of chronic neck, back, and left shoulder pain, with a report from claimant that she has a torn left rotator cuff, depression, some of it reactive with possible underlying panic disorder, well controlled hypertension, history of fibroid tumors, ectopic pregnancy and bowel issues.

(11) Claimant's most prominent complaint is her depression and body pain/fibromyalgia.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] in the hearing request.

* * *

Claimant suffers from chronic pelvic pain with fibroid uterus and pelvic adhesions requiring a total abdominal hysterectomy in March 2007. Additional diagnoses include fibromyalgia with chronic pain, left shoulder degenerative changes of acromioclavicular joint, hypertension, and mood disorder with severe depression secondary to multiple medical problems.

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity 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 denied claimant's application based on claimant's vocational profile [younger individual (age 47), with a high school diploma and a history of unskilled work as a cafeteria aide]. The department denied MA-P based on Vocational Rule 202.20 as a guide.

SDA was denied (PEM 261) because the nature and severity of the claimant's impairments do not preclude all work activity for the required period of time.

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 that 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.

A severe impairment is defined as a verified medical condition which precludes substantial employment. Duration means that the severe impairment is expected to last for 12 continuous months or result in death.

SHRT found that claimant meets the severity and duration test.

STEP 3

The issue at Step 3 is whether claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege that she meets any of 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 cafeteria aide at [REDACTED]. In this capacity, claimant was required to stand on her feet for an 8-hour shift and to perform work activities necessary to keep the cafeteria line operating properly.

Claimant's work as a cafeteria aide may be defined as unskilled light work.

The medical evidence of record, does not establish that claimant is physically unable to perform her previous work as a cafeteria aide.

However, claimant's mental condition (depression) does make it difficult for her to function in a work environment which involves constant contact with people.

However, claimant's combined impairments do prevent her from returning to her previous work as a cafeteria aide.

Claimant meets 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 evidence of record establishes that claimant is able to perform at least unskilled sedentary work.

Claimant performs a few activities of daily living. The medical evidence does not preclude all types of sedentary work.

In addition, the Ph.D. psychologist did not rule out all work activity, including sedentary work.

At the hearing, claimant testified that she was unable to work due to her pain in combination with her mental impairment. Evidence of pain, alone, cannot be the basis of a disability determination.

Looking at the record as a whole, the Administrative Law Judge is not persuaded that claimant is totally unable to work. It appears based on this record that claimant is able to perform unskilled sedentary work, including work as a ticket taker for a theatre, as a parking lot attendant, as well as light janitorial work.

Claimant's vocational profile shows a younger individual, age 47, with a high school education and a history of unskilled work as a cafeteria aide. Applying Med-Voc Rule 202.20, claimant is not disabled for MA-P/SDA purposes.

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 260/261.

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 17, 2009

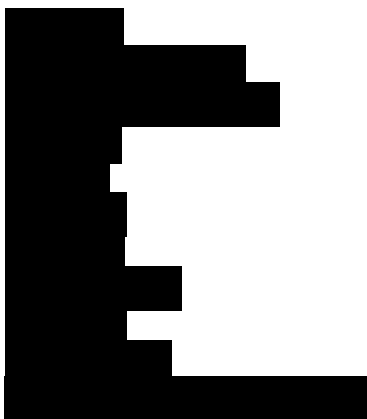
Date Mailed: August 18, 2009

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 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

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