

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: 2008-17303
Issue No: 2009
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 obtain a psychological evaluation. Claimant's psychological evaluation was returned to SHRT on August 13, 2008. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT.

After SHRT's second disability denial, the Administrative Law Judge 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)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (October 16, 2007) who was denied by SHRT (May 27, 2008), 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, August and September 2007.

(2) Claimant's vocational factors are: age—65; education—high school diploma; post-high school education—studied English at [REDACTED]; work experience—special needs bus driver (29 years), waitress (10 years).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since March 2005, when she was a bus driver for special needs children.

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

- (a) Anxiety;
- (b) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (MAY 27, 2008):

Cardiac catheterization dated 7/2007 showed no significant coronary artery disease and an ejection fraction of 70% (page 22).

In 7/2007, claimant was found to have a small AB fistula. In 8/2007, her small fistula was showing improvement. In 8/2007, she had a normal Doppler (page 16).

A DHS-49 form, dated 3/2008 showed claimant had chest pain, questionable coronary spasm, mitral valve prolapse, hypertension,

high cholesterol and tobacco abuse. On exam, claimant was 5'7" tall and 151 pounds. Blood pressure was 120/70. She had few expiratory wheezes and non-tender chest pain. The remainder of her exam was within normal limits. The doctor indicated claimant could occasionally lift 50 pounds or more, and she could stand/walk at least 2 hours in an 8 hour day (pages not numbered).

ANALYSIS:

Claimant had a normal cardiac catheterization in 7/2007. In 3/2008 her blood pressure was fairly well controlled. There was no evidence of musculoskeletal or neurological abnormalities.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming and grocery shopping (needs help). Claimant was successfully treated at [REDACTED] in 2007 for a femoral AV fistula in the groin. Claimant does not use a cane, walker, wheelchair or shower stool or any kind of brace.

(7) Claimant currently has a valid driver's license (her CVL has expired). She drives an automobile approximately once a month. Claimant is computer literate.

(8) The following medical reports were persuasive:

(a) A June 16, 2008 letter by claimant's primary physician was reviewed. The physician reports that claimant has been treating claimant for anxiety in August 2005. The family physician recommends that claimant see a psychiatrist or a therapist but claimant declined to pursue the recommendation (due to her past).

(b) A March 21, 2008 Medical Examination Report (DHS-49) was reviewed. Claimant's cardiologist reports the following diagnoses: chest pain, coronary spasm, mitral heart valve prolapse, hypertension, cholesterol and tobacco abuse. The cardiologist reports no physical limitations. Claimant is able to lift up to 50 pounds occasionally. She is able to stand/walk at least 2 hours in an 8 hour day and is able to sit 6 hours in an 8 hour day. She is able to use her

arms/legs normally; she is able to use her feet/legs normally. The cardiologist reports no mental limitations.

(9) The probative medical evidence does not establish an acute (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The PhD psychologist provided the following DSM diagnoses:

Axis I—Posttraumatic Stress Disorder.

Dysthymic Disorder

Nicotine Dependence

Axis IV/GAF—54 (moderate symptoms)

The psychologist's report, when taken with the medical record as a whole and claimant's testimony, does not establish an acute mental impairment that would totally preclude substantial gainful activity.

(10) The probative medical evidence of record does not establish an acute physical impairment expected to prevent claimant from performing all customary work functions. Claimant's cardiologist states that claimant has no physical limitations.

(11) Claimant's most prominent complaints are her anxiety and depression, and her reluctance to go to therapy or to seek the advice of a psychiatrist.

(12) Claimant currently receives RSDI benefits. She has not recently applied for SSI benefits from Social Security.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's position is summarized by [REDACTED] in the Hearing Summary:

Claimant was hospitalized in July 2007 (AV fistula with decreased hemoglobin). Additional diagnoses include recurrent chest pain with possible coronary spasm, mitral valve prolapse, hypertension

and symptoms of shortness of breath, palpitations, and generalized muscle aches.

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC). The department thinks that claimant does not meet the severity and duration requirements. The department denied MA-P because the medical records do not establish an impairment severe enough to preclude all customary work activities.

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).

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 purposes. PEM 260. “Disability,” as defined by MA-P 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.

SGA is defined as the performance of significant duties over a reasonable period of time for pay or engaging in work of a type generally performed for pay. PRM Glossary, page 34.

The evidence of record shows that claimant is not currently performing Substantial Gainful Activity (SGA).

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.

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 does not meet the severity and duration requirements.

The Administrative Law Judge agrees for the following reasons:

First, although claimant has demonstrated a troubling mental impairment (anxiety and depression) the psychological evidence of record does not establish that this impairment totally precludes all work.

Second, although claimant has had a history of severe heart conditions, these conditions are not currently severe enough to preclude all work activity.

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 bus driver for special needs children. Claimant's work as a school bus driver may be classified as sedentary work. Sedentary work is defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

The medical evidence of record establishes that claimant was successfully treated for her coronary artery disease. The medical record does not contain any additional medical impairments that would prevent claimant from returning to her job as a bus driver.

The psychological evidence provided by the department does not show that claimant's psychological condition is severe enough to preclude all employment.

Claimant is able to work as a ticker taker for a theatre, as a parking lot attendant and as a greeter at [REDACTED].

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P disability requirements under PEM 260.

Accordingly, the department's denial of claimant's MA-P 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

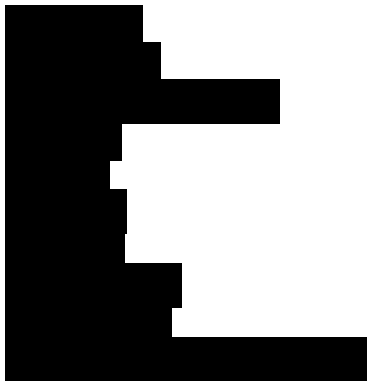
Date Mailed: August 31, 2009

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.

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/sd

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