

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: 2008-18062
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 12, 2008
Wayne 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 August 12, 2008, in Detroit. Claimant personally appeared and testified under oath.

The department was represented by Renee Jones (ES).

The Administrative Law Judge appeared by telephone from Lansing.

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 (January 10, 2008) who was denied by SHRT (June 12, 2008) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age--33; education--10th grade, post-high school education--GED; work experience--DHS chore services provider for her mother; garnder and flower planter, security guard, cashier at [REDACTED], and janitor at a senior citizens' home.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) by providing chore services for her mother for the amount of \$162 a month.

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

- (a) Fibroid uterine tumors;
- (b) Bladder is compressed;
- (c) Frequent urination;
- (d) Bladder pain;
- (e) Unable to stand for long periods;
- (f) Unable to sit for long periods;
- (g) Sleep dysfunction;
- (h) Needs a hysterectomy;
- (i) Takes pain pills;
- (j) Heavy periods;
- (k) Fatigue;
- (l) Hypertension/HNT;
- (m) Anxiety; and
- (n) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (June 12, 2008)

SHRT denied claimant's application because she did not establish a severe impairment under 20 CFR 416.920(c).

* * *

(6) Claimant lives with her mother and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dish washing, light cleaning, mopping,

vacuuming, laundry and grocery shopping. Claimant also provides personal care for her mother. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does not wear a brace on her neck, arms or legs. Claimant was not hospitalized in 2008 or 2009.

(7) Claimant has a valid driver's license but does not currently drive an automobile on a regular basis. Claimant plays games on the computer.

(8) The following medical/psychological records are persuasive:

- (a) February 19, 2008 DHS-49, Medical Examination Report was reviewed. The physician provided the following current diagnosis: fibroid uterus.
- (b) The physician provided the following physical limitations: Claimant is not able to do any lifting at all. Claimant is able to walk less than two hours in an eight-hour workday. She is able to sit less than six hours in an eight-hour workday. Claimant has no limitations on the use of her hands/arms or use of her feet/legs.
- (c) The physician reports no mental limitations.
- (d) A [REDACTED] report) was received.

The physician provided the following background:

Of more concern is that claimant continues to complain of symptoms attributable to her large leiomyomatous uterus. I referred her to gynecology for an evaluation and they do agree that she needs removal of her uterus. I believe their initial work-up consisted of endometrial biopsy which showed benign seeding of the endometrium and benign fragments of endometrial epithelium. These were negative for hyperclusion carcinoma. The patient continues to desire a hysterectomy. Her symptoms from the leiomyomatous large uterus include the inability to stand for long periods of time, unable to sit, and painful sex. She also has some heavy vaginal bleeding as well. She states that she cannot lift because when she lifts something, she has 'pain in her stomach.' She states that this discomfort and pain from her uterus does not allow her to work. She did express some disappointment with the gynecologist that she saw during the first follow-up with [REDACTED]

I feel that the overactive bladder issues are benign controlled well with medication. I do think that she continues to have pain and issues secondary to leiomyomatous uterus causing pressure effects and discomfort. Although I am not a gynecologist, I do understand her desire for a hysterectomy. She continues to be denied coverage for this procedure from the State given her insurance status. She states she will see [REDACTED] who is her original gynecologist and who she felt comfortable with.

* * *

(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. Claimant testified that she has been diagnosed with anxiety disorder and depression. However, there is no expert medical evidence in the record (reports from a Ph.D. psychologist or an M.D. psychiatrist) to establish either condition. To the contrary, the physician who completed the [REDACTED] stated that claimant had no mental limitations. Also, claimant did not provide a DHS-49D or a DHS-49E to show her mental residual functional capacity.

(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. While it is true that claimant's treating physician reports that she has an inability to stand for long periods of time and the [REDACTED] states that she is totally unable to lift, this medical source's opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record. Clearly, since claimant is acting as her mother's chore service provider, she is able to lift at least small amounts (5 to 10 pounds) occasionally.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant filed a timely appeal.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks he 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 not established a severe impairment which meets the department's severity and duration requirements. Under PEM 20 CFR 416.920(c).

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, he 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 claimant has been performing chore services for her mother since 2006. The Department of Human Services pays her \$162 a month for the chore services claimant provides. Since claimant is performing substantial gainful activity in the form of chore services for her mother, she does not meet 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.

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/SA, 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 the physical/mental ability to do basic work activities, she does not meet the Step 2 criteria.

Based on the medical evidence of record, claimant does not currently meet the severity and duration disability 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 disability test.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant is currently working as a chore services provider for her mother. This is light/medium work.

Except for the medical source opinion (MSO) provided by claimant's physician, there is no evidence that claimant is unable to work. To the contrary, the medical evidence shows the claimant is currently performing extensive activities of daily living in addition to providing chore services for her mother. For this reason, claimant's MSO opinion is not supported by the great weight of the evidence in the record, and will not be given controlling weight. 20 CFR 416.927(c) and 20 CFR 416.927(d).

Since claimant is currently working as a chore services provider, she 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/psychological 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 her anxiety and depression. There is no psychological/psychiatric evidence in the record to establish these diagnoses. Also, claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on her bladder impairment combined with frequent urination, painful bladder, inability to stand and sit. Claimant also has heavy menstruation, fatigue and high blood pressure. However, the medical evidence of record does not establish that claimant is totally unable to do any work. Claimant currently performs numerous activities of daily living, has an active social life wither mother and provides chore services for her mother. Taking the medical evidence of record, in combination with claimant's testimony, the Administrative Law Judge concludes the claimant is able to perform unskilled sedentary work (SGA) as well as chore services. Based on the evidence of record, claimant is able to work as a ticket taker for a theatre, as a parking lot attendant, as a greeter for [REDACTED] and as a chore services provider.

During the hearing, claimant testified that a major impediment to her return to work was her bladder/stomach pain resulting from a fibroid uterus. Unfortunately, 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.

For the above reasons, the department correctly denied claimant's MA-P/SDA application based on Steps 1 through 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: September 28, 2009

Date Mailed: September 29, 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

cc:

[REDACTED]