

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: 2008-19493  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 18, 2008  
Oakland 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 in Walled Lake on September 18, 2008. Claimant personally appeared and testified under oath.

The department was represented by Esther Beneson (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 SHRT on September 18, 2008. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. On September 25, 2008, SHRT approved claimant for MA-P and SDA.

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 (November 26, 2007) who was denied by SHRT (June 20, 2008) due to claimant's ability to perform past relevant work (receptionist). Claimant requests retro-MA for January, February and March 2008.

(2) Claimant's vocational factors are: age--46; education--high school diploma; post-high school education--none; work experience--administrative assistant for real estate office and receptionist for a veterinary clinic.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since December 2005 when she worked as an administrative assistant (word processor) for a real estate office.

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

- (a) Left hip dysfunction;
- (b) Needs a total hip replacement.

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

**OBJECTIVE MEDICAL EVIDENCE (June 20, 2008)**

A DHS-49 form, dated 2/2008, showed claimant had a history of avascular necrosis of the left hip, which began in 3/2007. No surgery was recommended. Her current diagnosis is anemia. On exam, claimant had an antalgic gait with limited Range of Motion (ROM) of the left hip, pain on ambulation and no ability to rotate the hip. The remainder of the exam was within normal limits (page 7). Claimant did not medically require the use of an assistive device. The doctor indicated that she could frequently lift 10 pounds and stand/walk less than 2 hours (page 8).

Another DHS-49 form, dated 10/2007, showed claimant had avascular necrosis of the left hip and anemia. She had decreased ROM of the left hip due to pain, but overall could move her hip freely. The remainder of the exam was within normal limits (page 9). The doctor indicated she could frequently lift 25 pounds and stand/walk less than 2 hours (page 10).

**ANALYSIS:**

Claimant had a history of avascular necrosis of the left hip in 3/2007. In 2/2008, she had antalgic gait, but could walk without assistance. She had limited ROM of the left hip. The remainder of her exam was within normal limits. Claimant was also noted to have anemia, but there was no indication of blood transfusions. Claimant's treating physician has given less than sedentary work restrictions, based on claimant's physical impairment. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence, and per 20 CFR 416.927(c) and 20 CFR 416.927(d), will not be given controlling weight. The selective objective medical evidence shows that claimant is capable of performing at least sedentary work.

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(6) Claimant lives with her parents, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping (sometimes), vacuuming (sometimes), and grocery shopping. Claimant uses a cane on a daily basis. She does not use a walker, a wheelchair or a shower stool. She does not wear braces on her neck, arms or legs. Claimant was hospitalized in March 2007 for a fractured left hip.

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

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

(a) A March 11, 2008 orthopedic examination note was reviewed.

The orthopedic surgeon provided the following background:

Claimant is a 45-year-old woman who has had one year of left hip pain, was diagnosed approximately one year ago with osteonecrosis of the left hip during a hospital admission for severe left hip pain. She was in the hospital

for about two days, discharged and has been experiencing increasing pain over the last year. She uses no assistive devices, and takes only Tylenol for pain. She rates her pain as 10/10, is extremely limited, basically a home ambulatory, and pain is aggravated by all weight-bearing activities.

Past medical history is significant for ethanol abuse. For about 4 years, she was drinking 6-8 beers a day. For the last several months, she has been drinking 2-3 beers a week. No other medial problems.

X-rays of the left hip, taken one year ago and films today show osteonecrosis of the left hip. Currently, she has complete loss of joint space, extensive collapse, arthritic changes on the acetabular side and subchondral cysts on both sides of the joint.

Impression is osteonecrosis of the left hip, stage 4-C, secondary to ethanol abuse.

- (b) A February 25, 2008 orthopedic examination note was reviewed.

The orthopedic physician provided the following assessment:

This is a 45-year-old Caucasian female with problem:

- (1) Avascular necrosis of the left hip. I filled out disability forms to this effect. The patient has confirmation on MRI. I will send her once she has obtained Medicaid to [REDACTED] for follow-up of this. She currently is not needing any assistance in walking.
- (2) Pernicious anemia. Claimant has been off her B12, therefore, I will load her again. I have given her a prescription for Cyanocobalamin injections to take weekly, 4 times a week and then monthly after that. She will come to the clinic for her injections.
- (3) Substance abuse. Claimant has been 2 months without cocaine. She is cutting down on her smoking and cutting down on her drinking significantly. I have encouraged her in this; she was taking Loritab in the past for her hip pain. I have discouraged her from using narcotics given her

history of substance abuse, and she is in agreement with this.

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- (9) On September 25, 2008, SHRT approved claimant for MA-P and SDA.

## CONCLUSIONS OF LAW

### **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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant meets the MA-P/SDA disability requirements under PEM 260/261. SHRT approved claimant for MA-P and SDA on September 25, 2008.

Accordingly, the department's denial of claimant's MA-P/SDA application is, hereby, REVERSED.

SO ORDERED.

/s/ \_\_\_\_\_  
Jay W. Sexton  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: January 19, 2010

Date Mailed: January 20, 2010

**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 receipt date of the rehearing decision.

JWS/kgw

cc:

