

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: 2007-20776
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 18, 2008
Cheboygan 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 Cheboygan on September 18, 2008. Claimant personally and testified under oath.

The department was represented by Kathy Lloyd (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/SDA applicant (February 22, 2008) who was denied by SHRT (June 20, 2008) due to claimant's ability to perform unskilled light work.

(2) Claimant vocational factors are: age—49; education—high school diploma; post high school education—none; work experience—laborer for a nursery, cashier at [REDACTED], motel maid.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since June 2007 when she briefly worked as a laborer at a nursery.

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

- (a) Back dysfunction;
- (b) Back pain;
- (c) Unable to stand for long periods;
- (d) Unable to sit for long periods;
- (e) Has difficulty walking;
- (f) Status post heart attack (2007);
- (g) Uses a pacemaker;
- (h) Depression.

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

OBJECTIVE MEDICAL EVIDENCE (June 20, 2008)

Claimant had an acute myocardial infarction (MI) in 6/2006 (page 13). She underwent heart cauterization which revealed no significant coronary artery disease, but her ejection fraction (EF) was only 15-20% (page 14). However, an echocardiogram, two days later revealed an EF of 40% (page 17).

In 1/2008, claimant was 202 pounds. Her blood pressure was 124/80. The carotids showed no bruits. The heart revealed regular rate and rhythm. There was no pathologic murmur. There was no S3 or S4 gallop. Lungs were clear. Extremities were without significant edema and 4+ pulses (page 29).

An echocardiogram, dated 3/2008, showed all cardiac sizes were just above normal. EF was normal. There was a discrete wall motion abnormality noted in the distal inferior septum. Valves were normal for age. There was no pericardial effusion and mild pulmonic and tricuspid regurgitation (page 40).

An MRI of the lumbar spine showed 6 lumbar vertebra and right-signed L3-4 disc bulge assuming 6 vertebra in the lumbar spine. On exam in 2/2008, claimant's motor strength was 5/5 in all extremities. Sensation was intact. Toes were downgoing. Straight leg raise was negative. Gait was normal. Deep tendon reflexes were full and symmetric (page 38).

A DH-49 form, dated 3/2008, showed claimant had normal EF with wall motion abnormalities. She was anxious and depressed. The remainder of the exam was within normal limits (page 70). The doctor stated she could occasionally lift 10 pounds and stand and/or walk less than 2 hours (page 69).

ANALYSIS: Claimant had an MRI in 6/2007. Her cardiac cauterization showed no significant coronary artery disease, but her EF was reduced. However, her EF improved to 40% two days later, and was normal in 3/2008. Claimant also had a disc bulge in the lumbar spine without any significant neurological abnormalities. Claimant's treating physician has given her 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 (d) will not be given controlling weight. The collective objective medical evidence shows that claimant is able of performing light work.

(6) Claimant lives alone, and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, and grocery shopping. Claimant does not use a cane, a walker, a wheel chair, or a shower stool. She does not wear a brace on her neck, her arms or legs. Claimant was hospitalized in July 2008 to have a pacemaker installed.

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

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

(a) The probative medical evidence is summarized by the SHRT team in paragraph #4, above.

(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. There are no current psychiatric/psychological reports in the record. 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 is totally unable to work, this Medical Source Opinion (MSO) is inconsistent with the great weight of the objective medical evidence in the record.

(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 she is entitled to MA-P/SDA based on the impairments listed in paragraph #4, above.

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 thinks that the medical evidence shows claimant has the capacity to perform a wide range of light work.

Based on claimant's vocational profile [younger individual (age 49) with a 12th grade education and a history of unskilled work], the department denied MA-P based on Med-Voc Rule 202.20, as a guide.

SDA was denied based on PEM 261 because the nature and severity of claimant's impairments do not preclude all work activities for at least 90 days.

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.

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/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 a combination of impairments which profoundly limit her physical/mental ability to do basic work activities she does not meet the Step 2 criteria.

The severity/duration test is a *de minimus* test. Therefore, claimant meets the Step 2 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.

However, SHRT has reviewed the applicable SSI Listings for spinal dysfunction and heart dysfunction. Unfortunately, claimant's medicals do not satisfy either Listing.

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 previously worked as a laborer for a plant nursery. Claimant's work at the plant nursery was medium work.

There is a Medical Source Opinion (MSO) in the record which states that claimant is not able to perform even sedentary work.

Because the Medical Source Opinion is not supported by the great weight of the evidence in the record, it will not be given controlling weight here.

However, claimant's recent heart attack in combination with her spinal dysfunction means that she is no longer able to perform her past medium work.

Therefore, claimant meets 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 depression. There is no psychological/psychiatric evidence in this record to establish a diagnosis of severe depression. Claimant did not submit a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

Second, claimant alleges disability based on a spinal dysfunction and radiating pain. A recent MRI report shows that claimant has 6 lumbar vertebra and right-sided L3-4 disc bulges. However, the medical records show that claimant's motor strength was 5/5 in all extremities. Her sensation was intact. Her toes were downgoing. The straight leg raise test was negative. Her gait was normal. Deep tendon reflexes were full and symmetric. Claimant does not meet MA-P/SDA standards on her spinal dysfunction.

During the hearing, claimant testified that a major impediment to her return to work was her spinal dysfunction in combination with radiating pain. 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 profound and credible, but 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 spinal dysfunction and radiating pain. Claimant currently performs extensive activities of daily living and provides daycare assistance for one of her grandchildren.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary work (SGA). In this capacity, she is able to work as a ticket taker at a theater, as a parking lot attendant, and as a greeter at [REDACTED].

Based on this analysis, 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: 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/vmc

cc:

