

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: 2008-20888
Issue No: 2009;4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 20, 2008
Kalamazoo 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 Kalamazoo on August 20, 2008. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED].

The department was represented by Dennis Goodwin (ES).

At the hearing, claimant requested additional time to submit new medical evidence. Claimant's medical evidence was sent to SHRT on August 22, 2008 for review. Claimant waived the time limits 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 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 28, 2007) who was denied by SHRT (June 23, 2008) due to insufficient evidence to establish a disability for the retro period (March, April and May 2007). Claimant requests retro MA for March, April and May 2007.

(2) Claimant vocational factors are: age—51; education—10th grade; post high school education—GED; work experience—school custodian and house cleaner.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since May 2005 when she was a school custodian.

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

- (a) Chronic pain in her right side;
- (b) Chronic back pain;
- (c) Chronic leg pain;
- (d) Inability to lift more than 20 pounds;
- (e) Unable to do her normal activities of daily living.

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

OBJECTIVE MEDICAL EVIDENCE (June 23, 2008)

Note: MRT approved MA-P and SDA benefits effective 6/2007. This case is looking at retro benefits 3/2007 to 5/2007.

MEDICAL SUMMARY:

Claimant was admitted in 5/2007 due to right hydronephrosis (page 8). She had a 5 needle aspirate of the right periurethral mass, which revealed no evidence of any obvious malignancy. Right hydronephrosis was noted to be secondary to a periurethral

process that was likely inflammatory. She was being referred to the vascular surgeon regarding claudication (page 16).

On 5/9/2007, the ankle-brachial index (ABI) on the right side was said to be 0.45. However the page was cut off, and we do not know the higher of the pressures from the postural tibial and dorsalis pedis arteries (page 108).

ANALYSIS:

Pages 24 through 195, were not copied appropriately, and only are “half” copied. Therefore, the majority of the medical is missing. On 5/9/2007, the ankle- brachial index on the right side was said to be 0.45. However, the page was cut off and we do not know the higher of the pressures from the postural tibial and dorsalis pedis arteries as required to meet or equal Listing 4.12. If claimant had surgical intervention, we would need the values after surgery to meet or equal the Listing. Based on the information that is currently in the file, an earlier onset is not established. The records in the file are incomplete, mainly because of copying errors. It is also noted that claimant was denied disability benefits by the DDS in 2008, so it is assumed that claimant had improved following treatment.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, and grocery shopping (needs help). Claimant received services at [REDACTED] in [REDACTED]. During this visit, claimant was diagnosed with an aneurism of the main aortic artery. Claimant was released without receiving any treatment in March. Claimant was again admitted in [REDACTED] as an in-patient at [REDACTED]. Claimant was hospitalized for 6 days so that she could receive the testing necessary to diagnose her condition. No surgical procedures were performed in May. On June 21, 2007, claimant was admitted for treatment at [REDACTED]. During this admission, claimant had surgery to remove a mass from her abdomen. Claimant does not currently use a cane, a walker, or a wheelchair. She does use a shower stool 30 times a month. She does not wear a brace on her neck or on her arms or legs.

(7) Claimant has a valid driver's license and drives an automobile approximately 4 times a month. Claimant is not computer literate.

(8) The following medical records are persuasive:

(a) A [REDACTED] report was reviewed. A stress test was performed on that date. The testing performed by [REDACTED] showed a normal stress test.

(b) A [REDACTED] history and physical was reviewed. The physician provided the following impressions:

- (1) Atypical chest pain;
- (2) Smoker;
- (3) Family history of heart disease;
- (4) Hypertension;
- (5) Unknown lipid status.

(c) A [REDACTED] report was reviewed. Claimant reported chronic chest pain for 1 week.

The physician provided the following admission diagnoses: acute chest pain; rule out myocardial infarction.

(d) A [REDACTED] consultation was reviewed.

The physician provided the following history: patient is a 50-year-old female who notes in the last 5 or 6 days she has developed the onset of severe right-sided flank pain. She points to an area in the region of the right sacroiliac joint. It radiates around the right iliac crest and into the lower quadrant. The pain is consistent with crampy in nature. It also has a burning component to it. It is not relieved by Vicodin. She states she had never had anything like this before. She finds if she lies on her left side, she feels slightly better than if she lies on her back or her right side. She notes that if she bends over, the pain will shoot down her leg. She notes she has had a kidney stone 10+ years ago and this seems somewhat different. She denies any recent trauma. She also notes she has problems with her right leg and notes that if she walks more than approximately a quarter of a mile, the right leg and toes will cramp up and

the pain will disappear after resting and then she will be able to restart walking subsequent to this.

In addition, she notes that for the last 5-6 days, she has had much pelvic pressure, urinary frequency, a feeling of getting complete emptying. She has not had any dysuria. She is going approximately every hour through the day and getting up 3-4 times at least through the night. No gross hematuria. No urinary infections in the past. No history of pyelonephritis. She notes she has not had any fevers, but has felt somewhat cold and clammy.

The physician provided the following assessment:

- (1) Lower urinary tract symptoms of uncertain etiology;
- (2) Right-flank side pain likely secondary to the right hydronephrosis;
- (3) Right-sided hydronephrosis. The obstruction is apparently secondary to a mass in the region of the right iliac artery. The differential would include inflammatory reaction from the aneurism, malignancy. In condition, intraureteral processes such as a ureteral tumor, could be considered as well.
- (4) Right iliac artery aneurism;
- (5) Hypertension;
- (6) Right leg pain most likely secondary to claudication;
- (7) A 30 pound weight loss of uncertain etiology.

- (e) A [REDACTED] discharge summary was reviewed. The physician provided the following discharge diagnoses:

- (1) Right-sided hydronephrosis;
- (2) Question of right ureteric mass;
- (3) Constipation;
- (4) Hypertension;
- (5) Hyperlipidemia;
- (6) Tobacco abuse;
- (7) Right lower quadrant mass, unknown etiology.

- (f) A [REDACTED] consultation report was reviewed.

The physician provided the following history: this is 50-year-old white female who notes a 7-8 month history of pain in her right groin. This radiates down the entire leg. She describes a cramping sensation. She also has some numbness in the foot. The numbness in the leg gets worse as she ambulates. She has had progressive claudication symptoms over this time and is now able to ambulate only very short distances. Over the last 4 to 5 days, she has noted a right back pain that has increased in intensity. She has had some difficulty urinating. She had a CT angio of the abdomen last month and that noted right common iliac artery aneurism with focal section. There was also an ill-defined soft tissue mass overlying the right iliac neurovascular bundle and also over the ureter. The hydronephrosis was above this mass. She underwent a cystoscopy and retrogrades with placement of a right urethral stent today. This noted an extrinsic compression of the ureter and the region considered.

The physician provided the following impressions:

- (1) Abdominal pain, mainly right-sided;
- (2) Right leg pain;
- (3) Claudication symptoms, progressive in nature;
- (4) Hypertension;
- (5) Right hydronephrosis;
- (6) Back pain.

- (g) A [REDACTED] discharge summary was reviewed.

The report states that claimant underwent abdominal surgery (ureterolysis) without complication. The procedure was successful.

- (h) A [REDACTED] history and physical examination was reviewed.

The physician provided the following history: claimant presented approximately one month ago with right-sided CVA and flank pain. Subsequent evaluation revealed a right hydronephrosis. Computerized tomography scan demonstrated some parenchymal loss and an obstructing

mass in the mid right ureter. Subsequent retro grade pyelogram demonstrated a long significant narrowing of the mid right ureter. No obvious intraluminal abnormalities noted, however extrinsic mass was evident.

The physician provided the following assessment: right hydronephrosis secondary to an obstructive mass in the mid right ureter. Differential includes an inflammatory mass such as a reactive inflammation secondary to iliac artery abnormality. Retroperitoneal fibrosis, or even a malignant process.

(9) The probative medical evidence does not establish an acute mental (non-exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not allege disability based on a mental impairment. Claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity. There are no Ph.D. psychologists or psychiatric reports in the record.

(10) The probative medical evidence of record does establish an acute physical (exertional) condition expected to prevent claimant from performing all customary work functions in March, April and May 2007. Claimant had a coronary vascular accident during this period. Also, during the treatment she received for her coronary problem, the physicians discovered an abdominal mass which was surgically removed in June 2007. The combined conditions (CVA plus the abdominal mass) precluded claimant from all customary work functions in March, April and May 2007.

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

(12) The local Medical Review Team (MRT) approved MA-P and SDA benefits for claimant, effective June 2007, but did not approve retro benefits for the period March through May 2007 because the majority of the medical evidence in the record was illegible.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant's basis for disability is summarized in the [REDACTED] hearing request as follows:

Claimant was hospitalized in March 2007 for right common iliac aneurysm with focal dissection and abdominal pain. Claimant was readmitted in [REDACTED] at [REDACTED] for hydronephrosis, flank pain, abdominal pain and leg pain likely due to claudication. Claimant has a history of hypertension. She suffers from chronic back pain and leg pain, significant for weight loss, frequent cramping in lower extremities.

DEPARTMENT'S POSITION

The department approved claimant for MA-P and SDA benefits effective June 2007. SHRT was unable to approve retro benefits for the period March through May 2007 because the medical evidence of record was not copied appropriately and therefore critical evidence was either unreadable or missing. In particular, the department was unable to determine the ankle-brachial index on the right side. For this reason, the department was unable to approve the requested benefits.

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).

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 (SDA). 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, or engaging in work of a type generally performed for pay. PRM, Glossary, page 34.

The department approved claimant for MA-P/SDA effective June 2007.

Claimant meets the Step 1 disability requirement.

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.

MRT approved MA-P and SDA benefits effective June 2007.

Claimant meets the Step 2 disability requirement.

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.

However, the department approved MA-P/SDA disability based on Listing 4.12.

Therefore, claimant meets 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 janitor at a school.

Claimant's work as a school janitor may be classified as medium work. Medium work may be defined as follows:

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

MRT approved MA-P and SDA benefits for claimant effective June 2007. Therefore, claimant meets the Step 4 eligibility test.

STEP 5

The issue at Step 5 is whether claimant has the residual functional capacity to do other work. For purposes of this analysis, the classified jobs as sedentary, light, medium and heavy.

These terms are defined in the [REDACTED] published by the [REDACTED].
[REDACTED] at 20 CFR 416.967.

The medical evidence establishes that claimant was unable to work effective June 2007. This is shown because MRT approved MA-P/SDA benefits effective that date.

Based on the nature of claimant's coronary vascular disease and the surgery which she received in June 2007, claimant would not be in any condition to perform any kind of work for the retro months of March, April and May.

Based on this analysis, claimant meets the Step 5 disability test.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant does meet the MA-P/SDA disability requirements under PEM 260/261.

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

SO ORDERED.

The department will review claimant's eligibility in 12 months.

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

Date Signed: January 4, 2010

Date Mailed: January 4, 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.

JAW/vmc

cc:

