

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: 2008-25754
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 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 September 16, 2008. Claimant personally appeared and testified under oath.

The department was represented by Ellen Arman (lead worker).

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 (August 23, 2007) who was denied by SHRT (August 5, 2008) due to claimant's ability to perform unskilled sedentary work.

(2) Claimant's vocational factors are: age--48; education--11th grade, post-high school education--associate's degree from [REDACTED]; work experience--cashier for [REDACTED] convenience store, sales representative for a bridal salon, and mortgage processor.

(3) Claimant is currently performing Substantial Gainful Activity (SGA) as a cashier at a [REDACTED] store. Claimant has been working at [REDACTED] for several years. She currently works 20 hours per week and earns approximately \$140 gross, each week. Claimant's duties at [REDACTED] include operating the cash register, stocking the shelves, mopping the floors and stocking the coolers.

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

- (a) Status post knee surgery;
- (b) Right hand crippled from hit and run accident;
- (c) Status-post closed head injury (1982);
- (d) Limited understanding of paperwork;
- (e) Taking seizure medication.

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

OBJECTIVE MEDICAL EVIDENCE (August 5, 2008)

SHRT thinks that claimant is able to perform unskilled sedentary work.

SHRT reviewed claimant's alleged disabilities under Listings 1.02, 1.04 and 11.18.

SHRT denied claimant's disability applications based on her ability to perform other unskilled sedentary work.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), light cleaning, vacuuming (sometimes), laundry and grocery

shopping. Claimant has not been hospitalized recently. Claimant does not use a cane, a walker, or a wheelchair. Claimant uses a shower stool approximately 5 times a month. She wears her knee brace approximately 20 times a month.

(7) Claimant has a valid driver's license and drives an automobile approximately 30 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) An April 2, 2008 mental report was reviewed. Claimant has the following complaints:

TBI with chronic pain; depression.

The consultant reports the following Activities of Daily Living:

Claimant reports performing ADLs independently and that she engages in housekeeping, shopping, drives a car, laundry, cooks simple meals, once provided child care, completes her own dressing, hygiene, bathing and grooming, watches TV, visits or socializes with friends, runs errands, makes appointments and calls 911 in an emergency.

* * *

The disability consultant provided the following diagnostic analysis:

AXIS I--History of polysubstance dependence (20 years in remission); history of depressive disorder NOS; chronic pain disorder.

AXIS V--68.

(b) A [REDACTED] internal medicine exam was reviewed.

The internist provided the following history:

Claimant is a 47-year-old female who is here for general internal medicine examination and to evaluate her disabilities. She states that her disability is related to a motor vehicle accident that occurred approximately 25 years ago, when she was hit by a car as a pedestrian. She had multiple

injuries including cervical fractures and fractures in other areas of the body. She also had a closed head injury and was hospitalized for approximately 6 months. She has been having problems with these areas over the years although they apparently have been getting somewhat worse. She states that currently she has problems with neck pain, right shoulder pain and right knee pain. She also has limited use of the right upper extremity due to her prior surgery in this area. She states that she has chronic pain that is worse with any prolonged standing or walking.

The internist provided the following musculoskeletal evaluation:

Claimant did have significant decreased range of motion of the right wrist. She had virtually no flexion or extension. She had about 5 degrees of abduction and no adduction. She also did not have any significant range of motion in the fingers. They were in an extended position with just minimal flexion of the fingers. She did have slight decreased range of motion of the right shoulder. Abduction was 95 degrees. External rotation was 80 degrees. Internal rotation was 30 degrees. There was normal range of motion in the other joints tested.

The internist provided the following assessment:

- (1) History of multiple fractures. Claimant had a very severe car accident when she was hit by a car about 25 years ago. She had multiple fractures at the time including fractures of the cervical spine. At this point, she has been having continuous problems with pain in multiple areas. On examination, she does have some tenderness in the trapezii. She also has decreased range of motion in the neck as well as in the right wrist and hand. She basically has very limited use of the hand at this point. Based on this, she should not be doing any lifting, probably more than 5 pounds, nor should she be doing any over-the-shoulder type work, nor should she be doing any prolonged standing or walking.
- (2) History of closed head injury. This also occurred when she was hit by a car. On examination today, she does seem to be fairly fluent in her speech. Her memory seems to be fairly well maintained. I think this needs to be further evaluated by neuropsychologic testing.

* * *

(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. The disability consultant provided the following DSM diagnosis: History of polysubstance abuse dependence, history of depressive disorder NOS, chronic pain disorder. AXIS 5--68. The disability consultant's report, when taken as a whole, does not establish an acute mental condition that would totally preclude substantial gainful activity.

(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. The [REDACTED] internist reported that claimant has a history of multiple fractures resulting in problems with pain in multiple areas. Claimant has decreased range of motion in the neck as well as in the right wrist and hand. She has basically very limited use of the right hand at this point. The physician provided the following work limitations: Claimant should not be doing any lifting, probably no more than 5 pounds, nor should she be doing any over-the-shoulder type work, nor should she be doing any prolonged standing or walking.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is disabled from doing 40-hour per week jobs due to the impairments listed in paragraph #4 above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled sedentary work.

The department evaluated claimant's disability claims under Listings 1.02, 1.04 and 11.18, and found they were not meritorious based on the listings.

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 evidence of record shows that claimant is currently performing SGA. She works approximately 20 hours a week for 7-11 and earns approximately \$600 a month gross. Claimant's work at the [REDACTED] store includes operating a cash register, stocking the shelves, mopping the floor and stocking the cooler. This is considered Substantial Gainful Activity.

Claimant does not meet the Step 1 disability requirements.

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 the severe impairment is expected to last for 12 continuous months or result in death.

Based on the *de minimus* rule, claimant meets the severity and duration requirements.

However, claimant does not meet the requirements for MA-P/SDA based on disability due to her substantial gainful employment, as described above.

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 evaluated claimant's disability based on Listings 1.02, 1.04 and 11.18. SHRT has determined that claimant does not meet the requirements of the Listings.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant is currently employed as a cashier/stocker/custodian at a [REDACTED] store.

Claimant's current employment at [REDACTED] establishes her ability to do substantial gainful activity.

Based on the sequential analysis, and claimant's current employment, claimant is not eligible for MA-P/SDA because she has not established that she is totally unable to work.

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 11, 2010

Date Mailed: January 12, 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.

2008-25754/JWS

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:

