

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: 2008-28780
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 17, 2009
Iron 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 February 17, 2009, in Caspian, Michigan. Claimant personally appeared and testified under oath.

The department was represented by Susan Kenney (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 (June 19, 2008) who was denied by SHRT (August 28, 2008) based on claimant's disability to perform light unskilled work. SHRT relied on Med-Voc Rule 202.20 as a guide.

(2) Claimant's vocational factors are: age—46; education—high school diploma; post high school education—two semesters at [REDACTED]; work experience—certified nurse aide for [REDACTED] (five years), nurse aide for [REDACTED] and nursing home aide (Newaygo).

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 2006 when she was a certified nurse aide for [REDACTED].

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

- (a) Severe headaches;
- (b) Drops things unexpectedly;
- (c) Right arm ache;
- (d) Bulging discs in the neck at C4, C5, C6;
- (e) Status post right elbow surgery;
- (f) Mid back dysfunction;
- (g) Bulging discs in back;
- (h) Right hip dysfunction;
- (i) Bone spurs;
- (j) Right knee dysfunction (seven surgeries);
- (k) Sensitive nerves in right knee;
- (l) Low back pain/bulging discs.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED]):

SHRT decided that claimant is able to perform unskilled light work. SHRT evaluated claimant's eligibility using SSI Listings

1.04 and 1.02. SHRT decided claimant does not meet any of these Listings.

SHRT denied eligibility because claimant is capable of performing unskilled light work under Vocational Rule 202.20, as a guide.

(6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dishwashing (sometimes), light cleaning, vacuuming, laundry and grocery shopping (needs help). Claimant does not use a cane, walker or wheelchair. She does use a shower stool approximately four times a month. She does not wear braces. Claimant received inpatient hospital services in [REDACTED] at [REDACTED] in [REDACTED], where she had right knee surgery.

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

(8) The following medical records are persuasive:

(a) A [REDACTED] narrative report from the [REDACTED] [REDACTED] was reviewed.

The physician was provided the following information:

Thank you very much for asking me to see claimant in regards to a recently discovered spot, shadow, pain lesion, or a regular infiltrate on her x-ray and confirmed on CT scanning. She is a pleasant, nonsmoking, 46-year-old, white female who basically is being followed for multiple problems that include hypercholesterolemia, severe asthma, multiple bone and arthritic complaints, some secondary to previous motor vehicle accidents, esophageal reflux disease, hypertension, and multiple previous operations on her knee and elbow, with a previous episode of Hepatitis-B.

She does have severe problems with her asthma, much worse in the spring and may have coexistent nasal allergies. A recent evaluation done because of some problems that she noticed that in retrospect is just a rib, blood to an x-ray and a CAT scan demonstrating an irregular, possibly scar process in the upper right lobe. She was involved in a

severe motor vehicle accident with multiple rib injuries; i.e., five broken ribs and multiple orthopedic injuries with a prolonged hospitalization.

She has no hemoptysis, unusual travel history, no history of malignancies or cancer. She has had a hysterectomy for lyme disease. She has no skin lesions, dark moles, cervical lymphadenopathy, thyroid masses, or known history of tuberculosis.

She is a nonsmoker, born and raised in Kentucky. She has had a negative PPD.

She is married and has four children.

A review of symptoms is non-contributory.

Her HEENT exam is unremarkable; specifically, with no signs of cervical lymphadenopathy or thyroid masses. Her lungs are clear; she has normal cardiovascular, skin and extremity examinations.

* * *

(9) There is no probative psychological evidence in the record to establish an acute (non-exertional) mental condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not submit a DHS-49D or DHS-49E to establish her mental residual functional capacities. Claimant did not allege disability based on a mental impairment.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments, expected to prevent claimant from performing all customary work functions for the required period of time. Claimant's pulmonary specialist states that she has "severe problems with her asthma, much worse in the spring and may have coexistent nasal allergies." She has a history of multiple bone and arthritic complaints, some secondary to her previous motor vehicle accident, esophageal reflux disease, hypertension, and

multiple previous operations on her knee and elbow. Claimant's pulmonologist did not say unequivocally that she is totally unable to work. At this time, there is no reliable medical evidence in the record to establish a severe, disabling condition.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. The Social Security denied her application; claimant filed a timely appeal. She recently had a hearing before an Administrative Law Judge, and awaits his decision.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

Claimant thinks she is entitled to MA-P/SDA benefits based on the impairments listed in Paragraph #4, above.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform unskilled light work. The department evaluated claimant's impairments using SSI Listings 1.04 and 1.02. The department decided that claimant does not meet any of the listings.

Based on claimant's vocational profile [younger individual (age 46), with a high school education, two semesters of college and a history of unskilled work as a nurse aide], the department denied disability benefits based on Med-Voc Rule 202.20, as a guide.

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 does 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).

The 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 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 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 the impairments which meet the SSI definition of severity/duration.

Claimant must establish an impairment which is expected to result in death, has existed for a least 12 months, and totally prevents all current work activities. 20 CFR 416.909.

Also, to qualify for MA-P/SDA, claimant must satisfy for the gainful work and the duration criteria. 20 CFR 416.920(a).

Since the severity/duration requirement is a *de minimus* requirement, claimant meets the Step 2 disability test.

Step #3

The issue at Step 3 is whether the claimant meets the Listing of Impairments in the SSI regulations. Claimant does not allege disability based on the Listings.

However, SHRT evaluated claimant's eligibility based on SSI Listings 1.04, 1.02. Claimant does not meet any of the Listings considered.

Therefore, claimant does not meet the Step 3 disability test.

Step #4

The issue at Step 4 is whether the claimant is able to do her previous work. Claimant last worked as a certified nurse aide for [REDACTED]. This was medium work.

The medical evidence of record establishes that claimant has neck pain, back dysfunction, right knee dysfunction and elbow dysfunction. These diagnoses preclude claimant from performing her previous medium work as a certified nurse aide.

Therefore, claimant does 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 combined impairments meet the department's definition of disability for MA-P/SDA purposes.

First, the claimant does not allege disability based on a mental impairment.

Second, claimant alleges disability based on hypercholesterolemia, severe asthma, multiple bone and arthritic complaints, some secondary to previous motor vehicle accidents, esophageal reflux disease, hypertension, and multiple previous operations of her knee and elbow. Although claimant's multiple complaints prevent her from doing work that requires heavy lifting, her complaints do not preclude all employment.

Finally, claimant testified that a major impediment to her return to work was her spinal dysfunction with pain, her elbow dysfunction with pain and her right knee dysfunction with pain. Unfortunately, evidence of pain, alone, is insufficient to establish disability per 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 combination of physical impairments. Claimant currently performs an

extensive list of activities of daily living, has an active social life with her husband and her grandson, and drives an automobile approximately three times a month.

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

Based on this analysis, the department correctly denied claimant's MA-P/SDA application, based on Step 5 of the sequential analysis, is 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.**

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

Date Signed: March 23, 2009

Date Mailed: March 24, 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 receipt 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/tg

cc:

