

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: 2008-5489
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 13, 2008
Berrien 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 Benton Harbor on February 13, 2008. Claimant personally appeared and testified under oath.

The department was represented by Sandra MacMartin (FIM).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant submitted new medical evidence at the hearing. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on February 13, 2008. Claimant waived the time limit requirements so that her new medical evidence could be reviewed by SHRT. After SHRT's second non-disability determination, the Administrative Law Judge made the final decision below.

ISSUE

(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 (August 14, 2007) who was denied by SHRT (January 17, 2008 and February 27, 2008) due to claimant's ability to perform unskilled light work. SHRT relied on Med-Voc Rule 202.20 as a guide. Claimant requests retro MA for May, June and July 2007.

(2) Claimant's vocational factors are: age—49; education—9th grade; post-high school education—GED; work experience—cashier at a truck stop, deli worker for a cafeteria, machine operator for a plastics factory.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a cashier at a truck stop in 2003.

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

- (a) Status post heart attack (January 2008);
- (b) Severe depression due to daughter's motorcycle accident;
- (c) Sleep dysfunction/uses sleep apnea machine.

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

OBJECTIVE MEDICAL EVIDENCE (JANUARY 17, 2008):

On 6/27/2007, claimant was able to go from sit to stand and on and off the exam table independently. She was unable to walk on her toes secondary to Achilles tendon pain. She had tenderness to palpitation over the Achilles tendon. No paraspinal muscle spasms appreciated. Range of Motion (ROM) of the lumbar spine was mildly limited. Both knees showed crepitation on the ROM. ROM was functional. No effusion was noted. No erythema was noted. Distal strength appeared to be symmetrical. There was no apathy noted in the lower extremities. Straight Leg Raise (SLR) was negative. Upper extremity ROM was within functional limits. Motor strength appeared to be functional and no atrophy was noted in the upper extremities. Tinel sign was negative bilaterally. The doctor recommended no prolonged standing or walking, no stair climbing, no squatting and no lifting greater than 15 pounds (page 14).

On 7/13/2007, claimant was 67" and 271 pounds. Her blood pressure was 124/73. Claimant's daughter was in the hospital in a coma as the result of a motorcycle accident (page 16). On exam, she was able to ambulate with difficulty, favoring the left leg to access exam table. She appeared in a wheelchair. She had normal ROM and strength, with no joint enlargement or tenderness of the bilateral upper extremities and the right lower extremity. The left knee was tender to palpitation with effusion laterally. Sensation was intact. She was oriented x 3 and there was no depression, anxiety or agitation. It was noted that a MRI of the left knee indicted meniscal tear and arthritis (page 119). Claimant was given a temporary handicapped parking sticker due to an acute injury to her left knee and a cane for the knee pain (page 120).

ANALYSIS:

Claimant is obese and complained of pain. SLR was negative. There was no atrophy noted in the upper or lower extremities. There was no evidence of significant neurological and abnormalities noted. She was noted to have chronic Achilles tendonitis, but was able to walk without assistance. The doctor did prescribe a cane in 7/2007 for acute injury to her left knee. Claimant indicated that she had a left knee replacement in 8/2007. It is expected that her knee would improve after surgery. The limits given in 6/2007 were prior to surgery. Claimant was denied Social Security disability benefits by the [REDACTED] in 12/2007.

(6) Claimant performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, laundry and grocery shopping. Claimant does not currently use a cane, walker, wheelchair or shower stool.

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

(8) The following medical records are persuasive:

See the SHRT assessment 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 psychiatric/psychological records and no evidence of a significant mental impairment. In fact, during an exam on July 13, 2007, depression, anxiety and agitation were ruled out. Claimant did not submit a DHS-49D or a DHS-49E to establish her current mental residual functional capacity.

(10) The probative medical evidence, standing alone, does not establish an acute (exertion) physical condition expected to prevent claimant from performing all customary work functions for the required period of time. The medical/vocational records do show the following impairments: Status post left knee replacement, chronic Achilles tendonitis. Prior to claimant's left knee replacement, she was subject to the following work limitations: No prolonged standing or walking, no stair climbing, no squatting and no lifting greater than 15 pounds. However, it would appear that these limitations are no longer valid since claimant now has a left knee replacement.

(11) Claimant has applied for federal disability benefits. Her application was recently denied by the Social Security Administration. Claimant filed a timely appeal.

(12) Claimant was recently assessed by the [REDACTED] department. She was advised that she should not work more than 20 hours per week.

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 a wide range of light work. The department denied claimant's MA-P application based on claimant's Med-Voc profile [younger individual, age 49) with a GED education and a history of semi-skilled work as a cashier].

The department denied SDA because the nature and severity of claimant's impairments do not preclude light work for 90 days or more.

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 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 and 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 eligibility 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 result in death, it must have lasted or be expected to last for a continuous period of at least 12 month. 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 combination of impairments which profoundly limit her physical/mental ability to do basic work activities, claimant does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT found that claimant does meet the severity and duration requirements.

Therefore claimant does not meet the Step 2 eligibility 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 a Listing.

Therefore claimant does not meet the Step 3 disability requirements.

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a cashier at a local truck stop. Claimant's work as a cashier was sedentary work. Sedentary may be defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Since claimant's medical records do not establish any prohibition against performing sedentary work, claimant is able to return to her previous job as a cashier for a truck stop.

Therefore claimant meets the Step 4 eligibility 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 evidence in the record that her mental/physical impairments meet the department's definition of disability for MA-P/SDA purposes.

First, claimant alleges that she is unable to work due to her recent heart attack in January 2008.

A careful review of claimant's heart attack medical evidence does not show that it is a permanent impairment to all employment.

Second, claimant thinks she is disabled based on her depression.

A careful review of claimant's non-exertional evidence shows that claimant does have some mild symptoms of depression. However, the new medical evidence submitted by claimant does not show that claimant depression is so severe that she is totally unable to do any work. Also, claimant did not submit any psychological or psychiatric assessments which document claimant's allegation of depression. Based on the evidence in the record, the Administrative Law

Judge concludes the claimant did not meet the burden of proof to show a totally disabling mental impairment.

Claimant does not meet the Step 5 eligibility test.

The Administrative Law Judge is not persuaded that claimant is totally unable to work based on her January heart attack and her depression. Claimant currently performs numerous activities of daily living, drives a car on a regular basis, and has an active social life with her grandchildren. This means that claimant is able to perform sedentary/light work (SGA).

Claimant is able to work as a ticker taker for a theatre, as a parking lot attendant, as a greeter for [REDACTED] or as a cashier for a truck stop.

Based on the foregoing analysis, the Administrative Law Judge concludes that the department correctly denied claimant's MA-P/SDA application, based on Step 5.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the claimant does not meet the MA-P/SDA disability requirements under PEM 260/261. Claimant is not disabled for MA-P/SDA purposes based on Step 5 of the sequential analysis, as presented above.

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: August 24, 2009


Date Mailed: August 25, 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/sd

cc:

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