

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: 2008-8176
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 19, 2008
Ogemaw 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 March 19, 2008, in West Branch. Claimant personally appeared and testified under oath.

The department was represented by Joey Marshall (FIM).

Claimant requested additional time to submit new evidence. Claimant waived the timeliness requirement so her new medical evidence could be reviewed by SHRT. Claimant did not submit new medicals by Record Close Date.

ISSUES

(1) Did claimant establish a severe mental impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

(2) Did claimant establish a severe physical impairment expected to preclude her from substantial gainful work, **continuously**, for one year (MA-P)?

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 applicant (July 31, 2007) who was denied by SHRT (February 20, 2008) due to claimant's failure to establish an impairment which meets the severity and duration requirements. Claimant requests retro MA for April, May and June 2007.

(2) Claimant's vocational factors are: age—51; education—high school diploma, post-high school education—two semesters at [REDACTED] (child development major); work experience—gas station cashier, video store route manager, and [REDACTED] counter representative and crew leader.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a gas station cashier in 2001.

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

- (a) Can't stand for long periods;
- (b) Can't lift heavy loads;
- (c) Unable to do household chores.

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

OBJECTIVE MEDICAL EVIDENCE (February 20, 2008)

Pulmonary Function Studies (PFS) dated 4/20/2007 showed claimant was 65" and her FEV1 (pre-bronch) was 2.44 and FVC was 3.01 (page 139).

The PFS was considered to be within normal limits (page 138).

Claimant was admitted 4/23/2007 to 4/26/2007 for a left thoracotomy with wedge resection of a left upper lobe nodule. The final diagnosis was benign left lung nodule granuloma (page 131).

On 6/7/2007, claimant had normal heart sounds and lungs were clear to auscultation (page 126).

A DHS-49 form, dated 6/19/2007, showed claimant was 178 pounds. Blood pressure (BP) was 128/80. She had pneumonia and a left lung nodule in the upper lobe. No other abnormal findings were noted (page 158). The surgeon indicated claimant would be limited for a 12-week recovery period after the thoracotomy (page 157).

Another DHS-49 form, dated 8/2007 and completed by the family physician, indicated claimant was 189 pounds. BP was 122/80. She had decreased breath sounds and wheezes at the bases and decreased air exchange at the base. She had chest wall pain and depression. The remainder of her exam was basically within normal limits (page 162). The doctor indicated claimant could only occasionally lift 10 pounds and stand/walk less than 2 hours in an 8-hour day. She also had mental limitations (page 161).

ANALYSIS: Claimant was found to have a lung nodule. She underwent surgical resection on 4/23/2007. The nodule was a benign nodule granuloma. The surgeon indicated that she would be limited for a 12-week recovery period. The 49 form completed by the family physician did not indicate any diagnosis or objective findings of rheumatoid arthritis or knee pain. Her hypertension is well controlled. She continues to have chest wall pain. However, it is expected that claimant would continue to improve and would not be limited from all types of work for 12 months in a row.

* * *

(6) Claimant lives with her husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking, dish washing, light cleaning, mopping, vacuuming, laundry (needs help), and grocery shopping (needs help). Claimant does not use a cane, walker, wheelchair, or shower stool. Claimant does not wear braces on her arms and legs.

(7) Claimant has a valid drivers' license and drives an automobile approximately four times a month. Claimant is computer literate and plays computer games.

- (8) The following medical records are persuasive:
- (a) A June 19, 2007 Medical Examination Report (DHS-49) was reviewed.

The physician provided the following current diagnosis: Pneumonia, left lung nodule, positive cytoscopy.

The physician noted the following limitations: Claimant is able to lift 10 pounds occasionally. She can stand/walk normally for one-hour intervals with 10 minute breaks. She is able to use her hands/arms for simple grasping and fine manipulating. Not able to use her hands/arms for reaching/pushing/pulling. Claimant is not able to use foot controls.

The physician reports that claimant has no mental limitations.

* * *

(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. There is no evidence in the record that claimant has recently been evaluated by a Ph.D. psychologist or a psychiatrist. Claimant did not submit a DHS-49D or 49E.

(10) The probative medical evidence, standing alone, does not establish an acute (exertional) condition expected to prevent claimant from performing all customary work functions for the required period of time. The medical records do show that claimant has the following diagnoses: lung nodule—granuloma, Chronic Obstructive Pulmonary Disease (COPD), emphysema, asthma, hypertension, rheumatoid arthritis and knee pain.

(11) Claimant's primary complaint is that she does not have the stamina to perform her daily household chores.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant also requests retro MA for April, May and June 2007.

DEPARTMENT'S POSITION

The department thinks that claimant has normal Residual Functional Capacity (RFC) to perform a wide range of unskilled work.

The department thinks that claimant's impairments do not meet/equal the intent or severity of a Social Security listing.

The department denied claimant's MA-P application because the nature and severity of claimant's impairments do not preclude all sedentary work for the required period of time.

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).

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 physical impairments meet the department's definition of disability for MA-P purposes. PEM 260. "Disability," as defined by MA-P 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.

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.

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 to result in death, it must have lasted or be expected to last for a continuous period of at least 12 months from the date of application. 20 CFR 416.909. Also to qualify for MA-P, claimant must satisfy both the gainful work and the severity/duration criteria. 20 CFR 416.920(a).

If claimant does not have an impairment or combination of impairments which profoundly limit her physical and/or mental ability to do basic work activities, she does not meet the Step 2 criteria. 20 CFR 416.920(c).

SHRT correctly found that claimant does not meet the severity and duration requirements.

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 eligibility test.

Step 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a cashier for a gas station. The medical records do not establish that claimant is totally unable to perform her previous activities as a gas station cashier. While claimant was excused from work for 12 weeks in order to recuperate from her lung biopsy, she is now able to return to work on a normal basis.

Since claimant is able to return to her past work as a gas station cashier, she does not meet 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. For purposes of this analysis, we classify 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/vocational evidence of record, taken as a whole, establishes that claimant is able to perform unskilled sedentary work. Claimant is able to work as a ticket taker for a theater, as a pizza delivery driver, as a parking lot attendant, and as a greeter for [REDACTED]. Also, claimant is able to return to her previous job as a gas station cashier.

In short, the Administrative Law Judge is not persuaded that claimant is totally unable to work based on her lung dysfunction and her lack of stamina and endurance. Evidence of lung dysfunction coupled with lack of stamina and endurance is insufficient to establish disability for MA-P purposes. The Administrative Law Judge concludes that claimant's testimony about her lack of stamina is 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 recent lung surgery and her chronic lack of endurance. Claimant currently performs numerous activities of daily living, drives an automobile four times a month, and is somewhat computer literate. This means that claimant is able to perform sedentary/light work (SGA).

Based on this analysis, the department correctly denied claimant's MA-P application.

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 disability requirements under PEM 260. Claimant is not disabled for MA-P purposes based on Step 5 of the sequential analysis, as described above.

Accordingly, the department's denial of claimant's MA-P application is, hereby,
AFFIRMED.

SO ORDERED.

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

Date Signed: August 28, 2009

Date Mailed: August 31, 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/cv

cc:

