

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: 2008-9857  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 18, 2008  
Wayne 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 Detroit on June 18, 2008. Claimant personally appeared and testified under oath.

The department was represented by Angela Wilson (ES).

Claimant requested additional time to submit new medical evidence requested by SHRT. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on July 31, 2008.

Claimant waived the timeliness requirement so that his new medical evidence could be reviewed by SHRT. After SHRT's second disability denial, the Administrative Law Judge issued the decision below.

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 7, 2007) who was denied by SHRT (March 4, 2008) based on claimant's failure to submit adequate medical information to reach a decision. SHRT requested additional medical information, which claimant provided.

(2) Claimant's vocational factors are: age--53; education—high school diploma, post-high school education--none; work experience—loan officer for [REDACTED], loan officer for [REDACTED].

(3) Claimant has not performed Substantial Gainful Activity (SGA) since she worked as a loan officer at [REDACTED] in 2006.

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

- (a) Unable to use right leg;
- (b) Arthritis of the neck;
- (c) Arthritis of the spine;
- (d) Arthritis of the shoulder;
- (e) Arthritis of the chest;
- (f) Arthritis of the arms and legs.

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

**OBJECTIVE MEDICAL EVIDENCE (MARCH 4, 2008)**

In 7/2007, claimant's family physician noted vertigo secondary to sinusitis, a questionable brain mass and back and chest pain with a normal exam (page 8).

**ANALYSIS:**

The medical evidence is insufficient to assess claimant's current level of functioning. SHRT requested additional medical evidence.

\* \* \*

(6) Claimant lives with her son. She performs the following Activities of Daily Living (ADLs): dressing (sometimes), bathing (sometimes), cooking, dish washing, light cleaning, and grocery shopping (sometimes). Claimant uses a cane to walk approximately 5 or 6 times a month. She does not use a cane, a walker, a wheelchair or a shower stool. She does not wear braces on her neck, arm or legs.

(7) Claimant has valid driver's license and drives an automobile approximately 3 times a month. Claimant is computer literate.

(8) The following medical records are persuasive:

(a) The SHRT summary of the recent medical evidence is presented at paragraph #5, 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 or psychological reports in the record. Claimant did not provide a DHS-49D or a DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical condition expected to prevent claimant from performing all customary work functions for the required period of time. Claimant did not submit a DHS-49 Physical Examination Report, or a DHS-54A (Medical Needs form) to establish her ability to perform work activities.

(11) Claimant has applied for federal disability benefits with the Social Security Administration. Social Security denied her application. Claimant failed to file a timely appeal.

## **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 failed to provide adequate medical verification of a disability.

SHRT requested a new physical examination in order to obtain updated medical information.

Claimant agreed to provide the new information. The new information was submitted to SHRT for review.

**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 medical/vocational evidence of record shows 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 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. 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, she does not meet the Step 2 disability criteria.

SHRT found that claimant's medical evidence was inadequate to establish a disability. 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 the Listings.

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 loan officer. Claimant's work as a loan officer was sedentary work.

There is no medical evidence in this record that would preclude claimant from returning to her previous work as a loan officer.

Therefore, claimant 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.

**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.

Claimant alleges disability based on arthritis throughout her body.

A careful review of the medical evidence in the record shows that claimant does have a severe impairment. However, claimant's impairments do not reach the level of severity to preclude all sedentary work.

Second, claimant testified that a major impediment to her return to work was the pain she has throughout her body caused by her arthritis. Evidence of pain, alone, is insufficient to establish disability for MA-P/SDA purposes.

The Administrative Law Judge concludes that claimant's testimony about her pain 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 arthritis and subsequent body pain.

Claimant performs many activities of daily living, has an active social life, and drives an automobile, occasionally. Taking the medical evidence as a whole, claimant is able to perform unskilled sedentary/light work (SGA).

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

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: August 11, 2009

Date Mailed: August 12, 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 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/sd

2008-9857/JWS

cc:

