

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: 2009-10230
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2009
Bay 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 on March 5, 2009 in Essexville. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED] of [REDACTED].

The department was represented by Nancy Mayhew (FIM).

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was submitted to SHRT on March 16, 2009. Claimant waived the time limits to enable SHRT to consider her new medical evidence. 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)?

(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 applicant (May 19, 2008) who was denied by SHRT (January 28, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirement?

(2) Claimant's vocational factors are: age—49; education—high school diploma; post high school education—three semesters at [REDACTED] (Liberal Arts Major); work experience—currently employed by her sister as a DHS chore services provider and a DHS daycare provider.

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

She has the following health conditions: abscess on right buttock, cellulitis, MRSA (infection), diabetes, hypothyroidism, decreased visual acuity in both eyes, proliferative retinopathy (both eyes) with neural vascularitalosis, vascular edema, neuropathy, decreased bilateral hands with numbness, pain and decreased fine motor skills.

* * *

Claimant is a 42-year-old female; 12th grade education and some college. She has a work history of cashier, banker and light work.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

SHRT denied claimant's eligibility because claimant failed to establish an impairment which meets the department's severity and duration requirements.

* * *

(5) Claimant performs the following activities of daily living: dressing, bathing, and light cleaning. Claimant does not use a cane or walker, wheelchair or shower stool. She does wear braces on her right hand at bedtime on a daily basis. Claimant's braces were not prescribed by a physician. Claimant received inpatient hospitalization in [REDACTED] for a severe urinary tract infection.

(6) Claimant does not have a valid driver's license and does not drive an automobile. Claimant is computer literate.

(7) The following medical records are persuasive:

(a) A [REDACTED] [REDACTED] medical discharge summary was reviewed.

The physician provided the following discharge diagnosis:

- (1) Cellulitis; left medial secondary to MRSA (infection);
- (2) Diabetes mellitus, Type II.
- (3) Hypothyroidism;
- (4) Hyperlipidemia;

(b) A [REDACTED] [REDACTED] medical history and physical examination was reviewed.

The internist provided the following history:

This 42-year-old female related that she developed a small blister on the medial aspect of her left ankle about one week ago. The blister was very painful and she also noticed presence of the side of the ankle. The patient was seen four days ago and was given antibiotics.... The blister became bigger and turned into a big sore with increase in redness and pain. The claimant was seen in the emergency room and was given Bancomycin and she was given morphine for the pain in the emergency room.

Claimant was admitted for further management since claimant failed outpatient therapy.

The internist provided the following assessment:

Cellulitis of the left foot with failed outpatient treatment. The physician did not report that claimant is totally unable to work.

(8) There are no recent psychiatric reports in the record. Claimant does not allege disability based on mental impairment. Claimant did not provide a DHS-49D or DHS-49E to show her mental residual functional capacity.

(9) The probative medical evidence does not establish an acute (exertional) impairment expected to prevent claimant from performing all customary work. The medical evidence from [REDACTED] ([REDACTED]) shows the following diagnoses:

- (a) Cellulitis, left knee/leg secondary to MRSA (infection);
- (b) Diabetes mellitus, general type
- (c) Hypothyroidism;
- (d) Hyperlipidemia.

(10) The internist did not report that claimant would be unable to work.

(11) Claimant recently applied for federal disability benefits with the Social Security Administration. Her application is still pending.

(12) Claimant is currently working for her sister as a chore services provider (26 hours a month) and a daycare provider (90 hours per month). The department paid claimant a monthly gross income of \$876 per month for the daycare and chore services claimant provides to her sister.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the residual functional capacity to perform normal work activities. The department evaluated claimant's eligibility using SSI listings and CFR 404, Subpart P. Claimant does not meet any of the listings.

The department thinks that claimant retains the residual functional capacity to perform normal work activities.

LEGAL BASIS

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 mental/physical impairments meet the department's definition of disability for MA-P purposes. PEM 260. "Disability," is defined by MA-P standards as 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 the claimant is performing substantial gainful activity (SGA). If the claimant is working and earning substantial income, she is not eligible for MA-P. Claimant's representative argued that she is not performing substantial gainful activity because

she does not earn \$900 a month. The Administrative Law Judge finds this argument disingenuous because claimant's monthly gross income is \$876 per month which is for eligibility purposes equivalent to substantial gainful activity.

Federal regulations provide the claimants who are working or otherwise performing substantial gainful activity (SGA) are not disabled regardless of medical conditions, age, education or work experience. 20 CFR 416.920(b).

The vocational evidence of record clearly shows that claimant is currently working two jobs (chore services and daycare). She is performing SGA.

Therefore, claimant does not meet 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. SHRT evaluated claimant's eligibility based on all the SSI listings for CFR 404, Subpart P. Claimant does not meet any of the listings.

Claimant did not submit any medical evidence showing that a physician approved a disability based on Listings 9.08 or 2.02.

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

STEP #4

The issue at Step 4 is whether claimant can do her previous work. Claimant is currently earning \$876 per month. Claimant is clearly able to perform work based on the services she is providing her sister and income she is receiving from the department.

Since is currently working, and performing substantial gainful activity, she does not meet the Step 4 disability test.

STEP #5

The issue at Step 5 is whether the claimant has residual functional capacity (RFC) to do other work.

Claimant has the burden of proof to show by the medical/psychiatric evidence in the record that her benign impairments meet the department's definition of disability for MA-P purposes.

First, claimant does not allege disability based on a mental disorder. Although claimant states that she cries frequently, there is no psychiatric evidence to establish the severe mental impairment. Also, claimant did not submit a DHS-49D or DHS-49E to establish a mental residual functional capacity.

Second, claimant alleges disability based on a long list of impairments, including abscess/right buttock, cellulites, MRSA (infection), diabetes, hypothyroidism, decreased visual acuity, peripheral retinopathy, macular edema, neuropathy, decreased bilateral hands with numbness, pain, and decreased fine motor skills. The most recent medical evidence provided by the [REDACTED] showed the following discharge diagnosis [REDACTED]):

- (1) Cellulitis of the left medial leg secondary to MRSA;
- (2) Diabetes Type II;
- (3) Hypothyroidism;
- (4) Hyperlipidemia.

The diagnoses provided by the [REDACTED] internist did not establish a severe physical impairment.

During the hearing, claimant testified that a major impediment to her return to work was numbness/pain/decreased fine motor skills due to neuropathy in her hands. Unfortunately, evidence of pain, alone, is insufficient to establish disability for MA-P 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 numerous physical impairments and the radiating pain and numbness in her bilateral hands. Claimant currently performs several activities of daily living and has an active social life with her live-in partner/sister. Also she is employed as a daycare provider by DHS. Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform simple unskilled sedentary work (SGA). In this capacity, she is able to work as a ticket taker at a theater, as a parking lot attendant and as a greeter at Wal-Mart. Obviously, she is also able to work as a chore services provider and as a daycare provider for small children.

Based on this analysis, the department correctly denied claimant's MA-P application based on Step 1 and Step 5 of the sequential analysis, as presided 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 disability requirements under PAM 260.

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: June 3, 2009

Date Mailed: June 3, 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:

