

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: 2009-11111
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2009
Genesee 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 in Flint on March 11, 2009. Claimant personally appeared and testified under oath. Claimant was represented by [REDACTED].

The department was represented by Mary Behrns (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was sent to the State Hearing Review Team (SHRT) on March 12, 2009. Claimant waived the timeliness requirement so that the 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)?

(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 (September 29, 2008) who was denied by SHRT (February 10, 2009) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro-MA for July and August 2008.

(2) Claimant's vocational factors are: age--48; education—11th grade; post-high school education—none; work experience—worked at a temp service and was assigned to a factory job, childcare provider.

(3) Claimant has not performed Substantial Gainful Activity (SGA) since 1999 when she worked in a factory.

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

- (a) Back dysfunction with pain;
- (b) Stomach dysfunction;
- (c) Status post stomach surgery.

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

OBJECTIVE MEDICAL EVIDENCE (February 10, 2009)

SHRT decided that claimant is not eligible for MA-P due to a lack of severity and duration. SHRT evaluated claimant's impairments

listing SSI Listing 404, subpart P, all Listings were considered. SHR noted that claimant had two hospital admissions (August and September 2008) due to bowel ischemia and chronic **pancreatitis**, respectively. She was emaciated in 11/2008 at 5' and 84 pounds but does not meet the new weight loss listing at this point. It is expected that her condition will continue to improve. However, if the updated medical records received at review date fro SDA, do not show improvement, MA-P should be reevaluated.

* * *

(6) Claimant lives alone and performs the following Activities of Daily Living (ADLs): dressings, bathing, cooking, dish washing. Claimant does not use a cane, a walker, a wheelchair or a shower stool. She does wear a back brace on a daily basis. Claimant received inpatient hospitalization in September 2008 for treatment of complications from her prior surgery.

(7) Claimant has a valid driver's license but does not drive an automobile. Claimant is not computer literate.

(8) The following medical records are persuasive:

- (a) A March 4, 2009 Medical Examination Report (DHS-49) was reviewed. The physician provided the following diagnoses: Chronic pancreatitis; GERD and hypertension.
- (b) The physician stated the following functional limitations: Lifting—no limitations noted; standing—no limitations noted; sitting—no limitations noted. Hand/arm function—no limitations; feet-leg functioning—no limitations. No mental limitations were reported.

(9) Claimant did not provide a recent psychiatric evaluation. Claimant did not provide a recent DHS-49D or a DHS-49E. The evidence of record does not establish a severe mental impairment.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment expected to prevent claimant from performing all customary work functions for the required period of time. Claimant submitted new medical evidence at the hearing: A

March 4, 2009 Medical Examination Report. The physician reported chronic pancreatitis, GERD and hypertension. The physician did not report any lifting limitations, standing limitations, walking limitations or sitting limitations. Furthermore, the physician did not report any problems with claimant's hands/arm functioning or with claimant's feet/leg functioning. Finally, the physician did not report any mental limitations.

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

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

DEPARTMENT'S POSITION

The department thinks that claimant has the normal Residual Functional Capacity (RFC). The department reviewed claimant's impairments using all the SSI Listings and CFR 404, Subpart P.

The department noted on the 282 that claimant was emaciated in November 2008, but decided she does not meet the new weight loss listing. The department expects that claimant's condition will continue to improve.

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 mental/physical impairments meet the department's definition of disability for MA-P purposes. PEM 260. "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.

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 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.

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

Also, to qualify for MA-P, claimant must satisfy both 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 claimant meets the Listing of Impairments in the SSI regulations. The department evaluated claimant's disability based on all applicable Listings.

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

STEP 4

The issue at Step 4 is whether claimant is able to do her previous work. Claimant previously worked as a laborer in a factory. Claimant's factory work was light work. Medical evidence of record establishes Claimant is emaciated and weighs only 85 pounds. Because of Claimant's current physical condition she is not able to complete an eight-hour shift doing manual labor at a factory.

Since Claimant is unable to return to her previous work as a factory worker, she does not need 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 of record, that her combined mental/physical impairments meet the definition of disability for MA-P purposes.

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

Second, claimant alleges disability based on back dysfunction with pain and stomach dysfunction with pain. The most recent medical evidence of record (Medical Examination Report DHS-49) dated March 4, 2009; Claimant does not have any functional limitations based on her recent stomach surgery.

During the hearing, claimant testified that a major impediment to her return to work was her back pain and stomach pain. 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 back and stomach dysfunction and related pain.

Claimant currently performs many activities of daily living, has an active social life with her daughter and grandchildren.

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 physically able to work as a ticket taker at a theatre, as a parking lot attendant, and as a greeter at [REDACTED]

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

Accordingly, the 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: September 28, 2009

Date Mailed: September 29, 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

cc:

[REDACTED]