

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: 2009-12354
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 29, 2009
Ottawa 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 April 29, 2009 in Holland. Claimant personally appeared and testified under oath.

The department was represented by Dan Boter, Program Manager.

The Administrative Law Judge appeared by telephone from Lansing.

ISSUES

(1) Did the 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 (October 9, 2008) who was denied by SHRT (February 20, 2009) due to claimant's failure to establish an impairment which meets the department's severity and duration requirements.

(2) Claimant's vocational factors are: age—50; education—high school diploma; post high school education [REDACTED] (one year), [REDACTED] [REDACTED] (two semesters) took nursing courses; work experience—deli clerk for [REDACTED], nurse aide at group home, office cleaner for [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since 2004, when she worked as a deli clerk for [REDACTED].

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

- (a) Degenerative disc disease;
- (b) Bulged disc;
- (c) Heel spurs;
- (d) Planter fasciitis;
- (e) Swelling in the feet;
- (f) Hypertension;
- (g) Headaches;
- (h) Abnormal heart beat;
- (i) Diabetes;
- (j) Diverticulitis;
- (k) Anxiety attacks;
- (l) Limited memory dysfunction.

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

OBJECTIVE MEDICAL EVIDENCE (February 20, 2009)

SHRT decided that claimant was able to perform normal work activities. SHRT evaluated claimant's eligibility using SSI Listings in 20 CFR 404, Subpart P, Appendix. SHRT decided that claimant does not meet any of the applicable listings. SHRT denied claimant disability based on 20 CFR 416.920(c) due to lack of severity and duration.

(6) Claimant lives with her ex-husband and performs the following Activities of Daily Living (ADLs): dressing, bathing, cooking (sometimes), dishwashing (sometimes), light cleaning, mopping (sometimes), grocery shopping (sometimes). Claimant does not use a cane, or walker, or wheelchair, or a shower stool. She does not wear braces. She was not hospitalized in 2008 or 2009.

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

(8) The following medical records are persuasive:

- (a) An October 13, 2008 Medical Examination Report (DHS-49) was reviewed. The physician reported the following diagnoses: elbow pain, shoulder pain, leg pain, foot pain and back pain. The physician did not report any physical limitations. The physician did not report any mental limitations.
- (b) An October 10, 2008 Medical Examination Report (DHS-49) was reviewed. The physician reported the following background:

Claimant last seen on 4/01/2008 and note reviewed. She had returned from [REDACTED] in March. Started treatment for blood pressure and anxiety. Controlled with Paxil. Discussed palpitations over the past year and Holter monitor done with supraventricular trachy noted. Since then, she was seen by cardiology and diagnosis still not clear. He has not planned any further testing and willing to see her again if symptoms worsen. She did change her blood pressure medications (Ace to Lopressor) and patient reported improvement with palpitations. Still smoking, about one pack a day and again reminded of need to stop and she would like to try patch again. Work for one year other time when used. Labs done since March with FBS 127 and AB and lipids. We started her on a statin further labs done in April*** Reviewed significance of the results in early diagnosis of diabetes. Recommended starting diet and exercise along with meloforamen will take diabetic ED referral.

Her blood pressure was 132/60 at time of exam.

The physician reported the following diagnoses:

- (a) The nine essential hypertension;
- (b) Other and unspecified hyperlipidemia;
- (c) Tobacco use disorder;
- (d) Tendonitis, Achilles.
- (e) A [REDACTED] report was reviewed.
An exercise stress test was reviewed.

The conclusions are as follows: (1) no chest pain or ischemic EKG change seen; (2) Perfusion myoview imaging that is expected to be normal with rest attenuation artifact; (3) normal ventricular systolic function with a calculated ejection fraction of 50%.

* * *

- (9) Claimant alleges disability based on a mental impairment: anxiety disorder.

There are no probative psychiatric reports in the record. Claimant did not provide a DHS-49E to establish her mental residual functional capacity.

(10) The probative medical evidence does not establish an acute (exertional) physical impairment or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. A recent physical examination report provides the following diagnoses: (1) Benign essential hypertension; (2) other and unspecified hyperlipidemia; (3) tobacco use disorder; (4) tendonitis/Achilles. The physician did not state that claimant is totally unable to work perfusion myoview imaging that is suspected to be normal, with rest attenuation artifact; (5) normal ventricular systolic function with a calculated ejection fraction of 59%.***

(11) Claimant alleges disability based on a mental impairment: anxiety disorder.

There are no probative psychiatric reports in the record. Claimant did not provide DHS-49D or DHS-49E to establish her mental residual functional capacity.

(12) The probative medical evidence does not establish an acute (exertional) physical impairment, or combination of impairments expected to prevent claimant from performing all customary work functions for the required period of time. A recent physical examination report provides the following diagnoses: (1) Benign essential hypertension; (2) Other and unspecified hyperlipidemia; (3) tobacco use disorder; (4) tendonitis/Achilles. The physician did not state that claimant is totally unable to work due to her physical impairments. At this time, however, there is no reliable medical evidence to establish a severe, disabling physical condition that totally precludes all work activities.

(13) Claimant recently applied for federal disability benefits with the Social Security Administration. Social Security denied her application; claimant filed a timely appeal.

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 is able to perform normal work activities. The department evaluated the claimant's impairments using the SSI Listings at 20 CFR 404, Subpart P, Appendix. The department decided the claimant does not meet any of the applicable SSI listings.

Based on claimant's vocational profile (younger individual, age 49, with a high school education, and two semesters at [REDACTED] and [REDACTED], and a history of unskilled work [the department denied disability based on claimant's failure to establish a severe impairment that precludes all work activities for a continuous period of 12 months.

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).

To determine to what degree claimant's alleged impairments limit her ability to work, the following regulations must be considered.

(a) **Activities of daily living.**

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

(b) **Social Functioning.**

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

(c) **Concentration, Persistence and Pace.**

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C) (3).

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 consideration of all factors in each particular case.

STEP #1

SGA is defined as a 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 that 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, has existed for at least 12 months, until it prevents all basic work activities. 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).

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. Claimant does not allege disability based on the Listings.

However, SHRT evaluated claimant's eligibility based on the Listings in 20 CFR 404, Subpart P, Appendix. SHRT determined that claimant does not meet any of the 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's last employment was working as a deli clerk for Food Giant. This was light work. Since claimant now has dizzy spells and panic attacks along with swelling in her feet, she is unable to return to her job at the deli which required that she stand constantly for her eight-hour shift.

Based on claimant's current physical impairments, she is not able to return to her previous job as a deli worker.

Therefore, claimant meets the Step 4 disability 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/psychiatric evidence in the record that her combined impairments meet the department's definition of disability for MA-P/SDA purposes. First, claimant alleges a mental impairment: Anxiety attacks and fear of being in public. There are no psychiatric reports in this record to establish a mental impairment. The October 10, 2008 Medical Examination Report (DHS-49) states that claimant has no mental limitations. Claimant did not submit any psychiatric reports to contradict the DHS-49, dated October 10, 2008. Also, claimant did not provide a DHS-49D or DHS-49E to establish her mental residual functional capacity. Second, claimant alleges disability based on a combination of physical impairments: degenerative disc disease, bulging disc, heel spurs, plantar fasciitis, swelling in the feet, hypertension, headaches, abnormal heartbeat, diabetes, and diverticulosis. The July 28, 2008 history and physical examination report provides the following clinical diagnoses:

- (a) benign essential hypertension;
- (b) other and unspecified hyperlipidemia;
- (c) tobacco use disorder;
- (d) tendonitis/Achilles.

The physician reports that claimant has been advised to stop smoking. However, he does not state, unequivocally that she is totally unable to work based on the combination of her physical impairments.

Third, claimant testified that a major impediment to her return to work was her leg pain from plantar fasciitis and heel spurs. Unfortunately, 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 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 combination of impairments. Claimant performs several activities of daily living, has an active social life with her husband and two adult sons who live with her, drives an automobile four times a month and is computer literate. 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 for a theater, as a parking lot attendant and as a greeter for [REDACTED]. She would also be able to work as a data entry clerk.

Based on this analysis, the department correctly denied claimant's MA-P/SDA application under 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/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: July 22, 2009

Date Mailed: July 23, 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:

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