

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: 2009-1339
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 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, a telephone hearing was held on February 4, 2009 in Flint. Claimant personally appeared and testified under oath.

The department was represented by Elizabeth Odle (JET worker).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

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

(2) Did claimant establish the 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:

heading

(1) Claimant is an MA-P/retro applicant (May 15, 2008) who was denied by SHRT (October 20, 2008) based on claimant's failure to establish an impairment which meets the department's severity and duration requirements. Claimant requests retro MA for February, March and April 2008.

(2) Claimant's vocational factors are: age—47; education—high school diploma; post high school education—has a certificate in sterile processing from [REDACTED]; work experience—deli worker at [REDACTED].

(3) Claimant has not performed substantial gainful activity (SGA) since November 2008 when she was a deli worker at [REDACTED].

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

- (a) A status post hysterectomy ([REDACTED]);
- (b) History of backaches;
- (c) History of migraine headaches;
- (d) Dysfunctional uterine bleeding.

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

OBJECTIVE MEDICAL EVIDENCE ([REDACTED])

The Medical Examination Report of [REDACTED] in the file provides a diagnosis of incomplete uterine collapse, cystocelen rectolele. The physician opined that claimant's condition only warranted a temporary disability.

ANALYSIS

Medical opinion was considered in light of CFR 416.927.

The department thinks that medical evidence in the file does not demonstrate any other impairment that would pose a significant work limitation.

* * *

(6) The claimant lives with her boyfriend and her boyfriend's two minor children. Claimant performs the following activities of daily living: dressing, bathing, cooking, dishwashing, light cleaning, mopping, vacuuming, laundry and grocery shopping. Claimant does not use a cane, a walker, a wheelchair or shower stool. She does not wear braces on her neck, back, arms or legs.

(7) Claimant received inpatient hospital services (hysterectomy) in [REDACTED]. She has not received any inpatient hospital services in 2009.

(8) Claimant has a valid driver's license but does not drive an automobile because hers was repossessed. Claimant is computer literate. Claimant has specialized training as a sterile processing assistant for surgical procedures.

(9) The following medical records are persuasive:

(a) Claimant's medical evidence is summarized by SHRT at Paragraph #5, above.

(10) Claimant does not allege a mental impairment as the basis for her disability. There is no probative psychological evidence in the record to establish an acute (non-exertional) mental condition, expected to prevent claimant from performing all customary work functions for the required period of time.

(11) 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 12 months or more. Claimant had a hysterectomy in [REDACTED]. This procedure was successful and claimant's physician released her to return to work.

(12) There is no reliable medical information in this record to establish a severe disabling physical condition at this time.

(13) Claimant has never applied for Social Security benefits.

CONCLUSIONS OF LAW

CLAIMANT'S POSITION

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

Claimant applied for MA-P in order to obtain assistance for the hospital bills she incurred in May 2008.

DEPARTMENT'S POSITION

The department thinks that claimant is able to perform normal work activities.

The medical evidence of record does not document a mental/physical impairment that significantly limits claimant's ability to perform basic work activities.

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 does 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 standards is 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 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 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 that she has an impairment which is expected to result in death, as existed for at least 12 months, and 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).

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.

SHRT evaluated claimant's eligibility based on the SSI Listings and decided that claimant does not meet any of the relevant 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 last worked as a deli worker for [REDACTED]. This was light work.

The medical evidence of record establishes that claimant had a hysterectomy in [REDACTED]. [REDACTED]. The procedure was successful and the claimant's physician has released her to return to work.

Therefore, claimant does not meet 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/psychological evidence in the record that the combined impairments meet the department's definition of disability for MA-P purposes.

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

Second, claimant alleges disability prior to May 2008 based on uterine dysfunction and the sequelae (headaches, bleeding and backaches). However, claimant's hysterectomy was

successful and she has been released to work. Therefore, claimant's physical impairments do not preclude all employment.

In short, the Administrative Law Judge is now persuaded that claimant is totally unable to work based on her status post hysterectomy in [REDACTED] and the sequelae. Claimant currently performs an extensive list of activities of daily living, has an active social life with her boyfriend and her boyfriend's children, and is able to drive when necessary. Claimant is also computer literate.

Considering the entire medical record, in combination with claimant's testimony, the Administrative Law Judge concludes that claimant is able to perform normal work activities (SGA). In this capacity, she was physically able to work as a ticket taker for a theater, as a parking lot attendant, as a greeter at [REDACTED], as a telemarketing representative and as a deli worker.

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 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: February 11, 2009

Date Mailed: February 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 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:

